

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1320 Session of  
1995INTRODUCED BY HECKLER, GERLACH, HELFRICK, AFFLERBACH, HART AND  
SCHWARTZ, NOVEMBER 29, 1995SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
NOVEMBER 12, 1996

## AN ACT

1 Amending the act of January 19, 1968 (1967 P.L.992, No.442)  
2 entitled "An act authorizing the Commonwealth of Pennsylvania  
3 and the counties thereof to preserve, acquire or hold land  
4 for open space uses," expanding its scope to include all  
5 local government units throughout this Commonwealth; adding  
6 definitions for "local government unit," "planning  
7 commission" and "transferable development rights"; providing  
8 for local option and for transferable development rights; and  
9 further providing for planning requirements, for limitations  
10 on exercise of powers, for acquisitions of real property  
11 interests, for public hearings, for property acquired in fee  
12 simple, for assessment of property, for termination or other  
13 disposition of open space property interests and for utility  
14 rights-of-way and underground gas storage areas.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. The title and sections 1, 2, 3, 4, 5, 6 and 7 of  
18 the act of January 19, 1968 (1967 P.L.992, No.442), entitled "An  
19 act authorizing the Commonwealth of Pennsylvania and the  
20 counties thereof to preserve, acquire or hold land for open  
21 space uses" are amended to read:

22 AN ACT

23 Authorizing the Commonwealth of Pennsylvania and the [counties]

1     local government units thereof to preserve, acquire or hold  
2     land for open space uses.

3     Section 1. Statement of Legislative Intent.--It is the  
4     purpose of this act to clarify and broaden the existing methods  
5     by which the Commonwealth and its local government units may  
6     preserve land in or acquire land for open space uses. The  
7     Legislature finds that it is important to preserve open space  
8     [in and near urban areas] and to meet needs for recreation,  
9     amenity, and conservation of natural resources, including farm  
10    land, forests, and a pure and adequate water supply. The  
11    acquisition and resale of property interests authorized by this  
12    act are hereby declared to be for the public benefit, for the  
13    advancement of the public health, safety, morals and general  
14    welfare of the citizens of the Commonwealth, and for the  
15    promotion of sound land development by preserving suitable open  
16    space and concentrating more dense development in nearby areas.

17    Section 2. Definitions.--For the purpose of this act the  
18    following definitions shall apply:

19    (1) "Open space benefits." The benefits to the citizens of  
20    the Commonwealth and its local government units which result  
21    from the preservation or restriction of the use of selected  
22    predominantly undeveloped open spaces or areas, including but  
23    not limited to: (i) the protection and conservation of water  
24    resources and watersheds, by appropriate means, including but  
25    not limited to preserving the natural cover, preventing floods  
26    and soil erosion, protecting water quality and replenishing  
27    surface and ground water supplies; (ii) the protection and  
28    conservation of forests and land being used to produce timber  
29    crops; (iii) the protection and conservation of farmland; (iv)  
30    the protection of existing or planned park, recreation or

1 conservation sites; (v) the protection and conservation of  
2 natural or scenic resources, including but not limited to soils,  
3 beaches, streams, flood plains, steep slopes or marshes; (vi)  
4 the protection of scenic areas for public visual enjoyment from  
5 public rights of way; (vii) the preservation of sites of  
6 historic, geologic or botanic interest; (viii) the promotion of  
7 sound, cohesive, and efficient land development by preserving  
8 open spaces between communities.

9 (2) "Interest in real property." Any right in real property,  
10 improvements thereto or water, whatsoever, including but not  
11 limited to a fee simple, easement, remainder, future interest,  
12 transferable development right (TDR), lease, license,  
13 restriction or covenant of any sort, option or contractual  
14 interest or right concerning the use of or power to transfer  
15 property.

16 (3) "Open space property interests." Any interest in real  
17 property acquired hereunder for the purpose of achieving open  
18 space benefits.

19 (4) "Open space uses." Land uses which are not inconsistent  
20 with the achievement of open space benefits.

21 (5) ["County." A county, or a county authority having among  
22 the purposes for which it was created the achievement of one or  
23 more of the open space benefits set forth in this section.]

24 "Local government unit."

25 (i) a county;

26 (ii) a county authority having among the purposes for which  
27 it was created the achievement of one or more of the open space  
28 benefits set forth in this section;

29 (iii) a municipal corporation as defined in 1 Pa.C.S. § 1991  
30 (relating to definitions) or any similar general purpose unit of

1 local government; or

2 (iv) any unit created by joint action of two or more local  
3 government units which is now or shall hereafter be authorized  
4 to be created by the General Assembly, including cooperation by  
5 two or more local government units in accordance with the act of  
6 July 12, 1972 (P.L.762, No.180), referred to as the  
7 Intergovernmental Cooperation Law.

8 (6) "Planning commission." A local board, commission or  
9 agency which has been designated by the governing body of a  
10 local government unit to establish and foster a comprehensive  
11 plan for land management and development with the local  
12 government unit.

13 (7) "Transferable development right" or "TDR." The  
14 attaching of development rights to specified lands which are  
15 desired by a local government unit to be kept undeveloped, but  
16 permitting those rights to be transferred from those lands so  
17 that the development potential which they represent may occur on  
18 other lands where more intensive development is deemed to be  
19 appropriate.

20 Section 3. Planning Requirements.--The Department of  
21 [Forests and Waters] Conservation and Natural Resources and the  
22 Department of Agriculture shall not acquire any interest in real  
23 property under the provisions of this act, unless said real  
24 property has been designated for open space uses in a resource,  
25 recreation, or land use plan submitted to and approved by the  
26 State Planning Board. A [county] local government unit shall not  
27 acquire any interest in real property under the provisions of  
28 this act unless said real property has been designated for open  
29 space uses in a resource, recreation or land use plan [approved]  
30 recommended by the [County Planning Commission.] planning

1 commission of the municipality in which the real property is  
2 located and adopted by the governing body of that municipality.  
3 Where the municipality in which the real property to be acquired  
4 is located has no planning commission, a local government unit  
5 shall not acquire any interest in real property under the  
6 provisions of this act unless said real property has been  
7 designated for open space uses in a resource, recreation or land  
8 use plan approved by the planning commission of the county in  
9 which the real property is located and adopted by the governing  
10 body of the municipality wherein the real property is located.

11 Section 4. Applicability.--The Commonwealth of Pennsylvania,  
12 through the Department of [Forests and Waters] Conservation and  
13 Natural Resources or the Department of Agriculture, may exercise  
14 the powers granted by this act only with the consent of the  
15 county commissioners of the county in which the real property is  
16 situated. All [counties] local government units may exercise the  
17 powers granted by this act[, without limitation as to area].

18 Section 5. Acquisition of Interests in Real Property.--(a)  
19 The Commonwealth of Pennsylvania, through the Department of  
20 [Forests and Waters] Conservation and Natural Resources, may  
21 acquire any interest in real property by purchase, contract,  
22 condemnation, gift, devise or otherwise, for any of the  
23 following purposes:

24 (1) To protect and conserve water resources and watersheds;

25 (2) To protect and conserve forests and land being used to  
26 produce timber crops;

27 (3) To protect an existing or planned park, forest, wildlife  
28 preserve, nature reserve or other recreation or conservation  
29 site by controlling the use of contiguous or nearby lands in  
30 order to protect the scenic, aesthetic or watershed values of

1 the site;

2 (4) To protect and conserve natural or scenic resources,  
3 including but not limited to soils, beaches, streams, flood  
4 plains or marshes;

5 (5) To protect scenic areas for public visual enjoyment from  
6 public rights of way;

7 (6) To preserve sites of historic, geologic or botanic  
8 interest;

9 (7) To promote sound, cohesive, and efficient land  
10 development by preserving open spaces between communities;

11 (8) To limit the use of the real property so as to achieve  
12 open space benefits by reselling real property acquired in fee  
13 simple, subject to restrictive covenants or easements limiting  
14 the use thereof for the purposes specified in clauses (1)  
15 through (7) hereof.

16 (b) The Commonwealth of Pennsylvania, through the Department  
17 of Agriculture, may acquire any interest in real property by  
18 purchase, contract, gift, or devise for any of the following  
19 purposes:

20 (1) To protect and conserve farmland;

21 (2) To protect and conserve water resources and watersheds;

22 (3) To limit the use of real property so as to achieve open  
23 space benefits by reselling real property acquired in fee  
24 simple, subject to restrictive covenants or easements limiting  
25 the use thereof for the purposes specified in clauses (1) and  
26 (2) hereof.

27 (c) [Counties] (1) A local government unit may acquire any <—  
28 interest in real property situate within its boundaries by  
29 purchase, contract, condemnation, gift, devise or otherwise, for  
30 any of the purposes set forth in clauses [(a) (1) through (a)

1 (8)] (1) through (8) of subsection (a) of this section, and may  
2 acquire any interest in real property situate within its  
3 boundaries by purchase, contract, gift or devise, for any of the  
4 purposes set forth in clause [(b) (1)] (1) of subsection (b) of  
5 this section[.], including limiting the use of real property to  
6 achieve open space benefits by reselling real property acquired  
7 in fee simple, subject to restrictive covenants or easements  
8 limiting the use thereof for the purposes set forth in clauses  
9 (1) through (7) of subsection (a) and clause (1) of subsection  
10 (b) of this section.

11 (2) During the time that real property or any interest in  
12 real property acquired by a local government unit for open space  
13 purposes in accordance with this act is held by the local  
14 government unit, the real property shall be ineligible for the  
15 purchase of agricultural conservation easements authorized in  
16 the act of June 30, 1981 (P.L.128, No.43), known as the  
17 "Agricultural Area Security Law."

18 Section 6. Public Hearing.--Interests in real property to be  
19 acquired pursuant to the provisions of this act shall be  
20 designated by the Department of [Forests and Waters]  
21 Conservation and Natural Resources, the Department of  
22 Agriculture or [the county] a local government unit, whichever  
23 is acquiring them. After such designation, the said interests  
24 shall not be acquired until a public hearing is held and after  
25 notice to all owners of said interests in real property and to  
26 [the municipalities in which county said interests in real  
27 property are located, in each county where the land is situate]  
28 any local government unit in which land is situate, at which  
29 hearing the department or [county] local government unit  
30 concerned shall set forth the interests to be taken and their

1 proposed open space benefits. At the public hearing persons and  
2 municipalities affected by the proposed acquisition of interests  
3 in real property shall have an opportunity to present relevant  
4 evidence.

5 Section 7. Property Acquired in Fee Simple.--If the owner of  
6 the interests in real property to be acquired pursuant to the  
7 provisions of this act prefers to have the Commonwealth or the  
8 [county] local government unit acquire the property in fee  
9 simple, the Commonwealth or the [county] local government unit  
10 shall be required to acquire the property in fee simple. All  
11 real property acquired in fee simple by the Commonwealth,  
12 through either the Department of [Forests and Waters]  
13 Conservation and Natural Resources or the Department of  
14 Agriculture, or by a [county] local government unit, under the  
15 provisions of this act, shall be offered for resale publicly in  
16 the manner provided by law within two years of the date of  
17 acquisition, subject to restrictive covenants or easements  
18 limiting the land to such open space uses as may be specified by  
19 the designating department or agency in accordance with section  
20 6 hereof, and consistent with the resource, recreation, or land  
21 use plan established in accordance with section 4 hereof. In the  
22 case of the Commonwealth, such resales may be made without  
23 specific authority of the General Assembly and shall be through  
24 the Department of [Property and Supplies] General Services at  
25 public sale in the manner provided by law.

26 Section 2. The act is amended by adding sections to read:

27 Section 7.1. Local Taxing Options.--(a) A local government  
28 unit, excluding counties and county authorities, may, by  
29 ordinance, impose, in addition to the statutory rate limits on  
30 real estate taxes set forth in the municipal code of that local



1 government unit, a tax on real property not exceeding the  
2 millage authorized by referendum under this subsection. In the  
3 alternative, a local government unit, excluding counties and  
4 county authorities, may by ordinance impose, in addition to the  
5 earned income tax rate limit set forth in the act of December  
6 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling  
7 Act," a tax on THE earned income OF THE RESIDENTS OF THAT LOCAL <—  
8 GOVERNMENT UNIT not exceeding the rate authorized by referendum  
9 under this subsection. Revenue from the levy shall be used to  
10 retire the indebtedness incurred in purchasing interests in real  
11 property or in making additional acquisitions of real property  
12 for the purpose of securing an open space benefit or benefits  
13 under the provisions of this act or the act of June 30, 1981  
14 (P.L.128, No.43), known as the "Agricultural Area Security Law."  
15 The local taxing option authorized by this subsection shall not  
16 be exercised unless the governing body of the local government  
17 unit shall by ordinance first provide for a referendum on the  
18 question of the imposition at a specific rate of the additional  
19 tax to be imposed and a majority of those voting on the  
20 referendum question vote in favor of the imposition of the tax.  
21 The ordinance of the governing board of the local government  
22 unit providing for a referendum on the question shall be filed  
23 with the county board of elections. The referendum shall be  
24 governed by the provisions of the act of June 3, 1937 (P.L.1333,  
25 No.320), known as the "Pennsylvania Election Code." The election  
26 official shall cause the question to be submitted to the  
27 electors of the local government unit at the next primary,  
28 general or municipal election occurring not less than the  
29 thirteenth Tuesday following the filing of the ordinance with  
30 the county board of elections. At such election, the question

1 shall be submitted to the voters in the same manner as other  
2 questions are submitted under the provisions of the  
3 "Pennsylvania Election Code." The question to be placed upon the  
4 ballot shall be framed in the following form:

5 Do you favor the imposition of a (describe tax in millage  
6 or rate) by (local government unit) to be used to  
7 (purpose)?

8 (b) The board of directors of a school district may, by  
9 resolution, exempt the following real property from further  
10 millage increases imposed on real property:

11 (1) those whose open space property interests have been  
12 acquired by a local government unit under this act;

13 (2) real property which is subject to an easement acquired  
14 under the act of June 30, 1981 (P.L.128, No.43), known as the  
15 "Agricultural Area Security Law"; and

16 (3) real property whose TDR's have been transferred and  
17 retired by a local government unit without their development  
18 potential having occurred on other lands; provided that the  
19 exemption from further millage increases for real property as  
20 provided for in clause (1), (2) or (3) of this subsection shall  
21 be authorized only for real property qualifying for such  
22 exemption under the provisions of section 2(b)(1) of Article  
23 VIII of the Constitution of Pennsylvania. If the board so  
24 resolves, the millage freeze authorized herein shall apply to  
25 all eligible real property, whether the real property met the  
26 criteria of this subsection prior to or subsequent to the date  
27 of the resolution imposing the millage freeze. For prior  
28 acquisitions, the date on which the millage rate shall be frozen  
29 is the date of the resolution. For subsequent acquisitions, the  
30 date on which the millage rate shall be frozen is the date the

local government unit completes the acquisition. The school district shall give prompt notice to the appropriate tax collection agent of the exact amount of the millage, the date it was frozen, and each parcel to which the freeze applies. The exemptions granted under this act shall not be considered by the State Tax Equalization Board in deriving the market value of school district real property so as to reduce the subsidy to that school district or to increase the subsidy to any other school district.

Section 7.2. Procedures to be Followed in Connection with Acquisition of Real Property or Open Space Property Interests.--

(a) A local government unit shall not acquire interests in real property pursuant to this act unless that local government unit has by ordinance or resolution established procedures for reviewing open space property interests considered for acquisition by the local government unit, for rating the relative desirability of interests in particular parcels of real estate, and for establishing the price the local government unit will pay.

(b) When a local government unit acquires an interest in real property as authorized under the provisions of this act, it shall establish and maintain a repository of records of the interests in real property which have been or are acquired by the local government. The local government unit shall also record each interest in real property acquired by the local government unit in the office of the recorder of deeds for the county in which the real property is located.

(c) A local government unit acquiring interests in real property shall submit to the school district within which the real property is located a copy of the deed reflecting the open

1 space property interest acquisition certified by the county  
2 recorder of deeds.

3 Section 7.3. Acquisition of Open Space Property Interests on  
4 an Installment Basis.--A local government unit may authorize the  
5 establishment of a program to purchase open space property  
6 interests on an installment or other deferred basis. The  
7 obligation of the local government unit to make payments on an  
8 installment or other deferred basis shall not be subject to the  
9 requirements of section 602(b) or (c) of the act of July 12,  
10 1972 (P.L.781, No.185), known as the "Local Government Unit Debt  
11 Act." A landowner who enters into an installment agreement with  
12 a local government unit shall receive, in addition to the  
13 selling price, interest in an amount or at a rate set forth in  
14 the purchase agreement.

15 Section 3. Sections 8, 9 and 10 of the act are amended to  
16 read:

17 Section 8. Exercise of Eminent Domain.--(a) Use of the  
18 power of eminent domain to acquire interests in real property  
19 for the purposes of this act shall be exercised in accordance  
20 with the provisions of the Eminent Domain Code of the  
21 Commonwealth.

22 (b) Notwithstanding the provisions of subsection (a) or  
23 section 5(c), local government units other than counties or  
24 county authorities may not exercise the power of eminent domain  
25 in carrying out the provisions of this act.

26 Section 9. Assessment.--Any open space property interest  
27 acquired by the Commonwealth or a [county] local government unit  
28 under this act is held for public purposes, and shall be exempt  
29 from taxation. The assessment of private interests in land  
30 subject to open space property interests under this act shall

1 reflect any change in market value of the property which may  
2 result from the acquisition of open space property interests by  
3 the Commonwealth or a [county] local government unit.

4 Section 10. Termination or Disposition of Open Space  
5 Property Interests.--(a) If the Commonwealth, through either  
6 the Department of [Forests and Waters] Conservation and Natural  
7 Resources or the Department of Agriculture with the approval of  
8 the State Planning Board, or a county or county authority with  
9 the approval of its County Planning Commission, determines that  
10 it is essential for the orderly development of an area to  
11 terminate or sell open space property interests acquired under  
12 this act other than property held in fee simple, the  
13 Commonwealth or the county or county authority shall offer to  
14 transfer to the original property owner from whom said property  
15 interests other than fee simple were acquired, or his estate if  
16 the original property owner, or his estate, is the current  
17 property owner, said property interests at a price which shall  
18 be equal to the price paid by the Commonwealth or the county or  
19 county authority to the original property owner for said  
20 interests; and, if said offer is not accepted within ninety  
21 days, the Commonwealth or the county or county authority shall  
22 then sell the open space property interests at public sale in  
23 the manner provided by law. In the case of the Commonwealth,  
24 such transfer or sale may be made without specific authority of  
25 the General Assembly, and shall be through the Department of  
26 [Property and Supplies] General Services at public sale in the  
27 manner provided by law.

28 (b) If the local government unit, excluding counties and  
29 county authorities, with the approval of the planning commission  
30 serving the municipality in which the real property is located,

1 determines that it is essential for the orderly development of  
2 an area to terminate or sell open space property interests  
3 acquired under this act other than property held in fee simple,  
4 the local government unit shall offer to transfer to the  
5 original property owner from whom said open space property  
6 interests other than fee simple were acquired, or his estate if  
7 the original property owner or his estate is the current  
8 property owner, said property interests at a price which shall  
9 be equal to the price paid by the local government unit to the  
10 original property owner for said interests. If the local  
11 government unit's offer is not accepted within ninety days, the  
12 local government unit shall then sell the open space property  
13 interests at public sale in the manner provided by law. Before  
14 any open space property interests are disposed of by a local  
15 government unit, the officials of the local government unit must  
16 first put the question to its electorate at the time and place  
17 of any general, municipal or primary election to determine if a  
18 majority of the voters participating in said election assent to  
19 the proposed disposition of the specific open space property  
20 interests.

21 Section 4. The act is amended by adding a section to read:

22 Section 10.1. Transfer Development Rights.--If a TDR is  
23 acquired under this act by a local government unit, it may be  
24 disposed of in any manner recommended by the planning commission  
25 and adopted by the governing body of that local government unit.

26 Section 5. Section 11 of the act is amended to read:

27 Section 11. Utility Rights of Way; Underground Gas  
28 Storage.--(a) The ownership by the Commonwealth or a [county]  
29 local government unit of an open space property interest shall  
30 not preclude the acquisition, by lease, purchase, or eminent

1 domain, and use of rights of way or underground gas storage  
2 rights in such property by a public utility or other body  
3 entitled to exercise the power of eminent domain.[, if in the  
4 case of an acquisition by a body other than a public utility the  
5 State Planning Board, or, in the case of ownership by a county,  
6 the County Planning Commission, after notice to the Department  
7 of Forests and Waters or the Department of Agriculture as the  
8 case may be, after public hearing, shall approve such  
9 acquisition, or in the case of acquisition by a public utility  
10 if the Pennsylvania Public Utility Commission, after notice to  
11 the Department of Forests and Waters, the Department of  
12 Agriculture, or the county, as the case may be, and after public  
13 hearing, shall find that such acquisition and use are necessary  
14 or proper for the service, accommodation, convenience or safety  
15 of the public.] In the case of an acquisition from the  
16 Commonwealth by a body other than a public utility, such  
17 acquisition shall occur only if the State Planning Board, after  
18 public hearing with notice to the Department of Conservation and  
19 Natural Resources or the Department of Agriculture, as the case  
20 may be, shall approve such acquisition. In the case of an  
21 acquisition from a local government unit by a body other than a  
22 public utility, such acquisition shall occur only if the  
23 governing body, after public hearing with notice to the public,  
24 shall approve such acquisition. In the case of an acquisition  
25 from the Commonwealth or a local government unit by a public  
26 utility, such acquisition shall occur only if the Pennsylvania  
27 Public Utility Commission, after public hearing with notice to  
28 the Department of Conservation and Natural Resources, the  
29 Department of Agriculture or the local government unit, as the  
30 case may be, shall find that such acquisition and use are

1 necessary or proper for the service, accommodation, convenience  
2 or safety of the public.

3 (b) (1) Notice of public hearing given in accordance with  
4 subsection (a) shall include a statement of the purpose of the  
5 public hearing and the date, time and place of the public  
6 hearing.

7 (2) In the case of notice to the appropriate department or  
8 local government unit as specified in subsection (a), the notice  
9 shall be sent by United States First Class Mail at least twenty  
10 days prior to the hearing.

11 (3) In all cases where a public hearing is to be held in  
12 accordance with subsection (a), notice to the public shall be  
13 given by publication one time at least twenty days prior to the  
14 hearing, in a newspaper of general circulation in the area where  
15 the open space land is located and written notice shall be  
16 conspicuously posted at points deemed sufficient by the body  
17 conducting the public hearing to notify potentially interested  
18 citizens. The affected open space tract shall be posted at least  
19 ten days prior to the hearing.

20 Section 6. This act shall take effect immediately.