

PRESERVING LAND FOR OPEN AIR SPACES

Act of Jan. 19, (1968) 1967, P.L. 992, No. 442

Cl. 32

AN ACT

Authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses. (Title amended Dec. 18, 1996, P.L.994, No.153)

Compiler's Note: Section 304(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Department of Conservation and Natural Resources shall exercise the powers and duties conferred upon the Department of Forests and Waters by Act 442 of 1967.

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

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

(1 amended Dec. 18, 1996, P.L.994, No.153)

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

(1) "Open space benefits." The benefits to the citizens of the Commonwealth and its local government units which result from the preservation or restriction of the use of selected predominantly undeveloped open spaces or areas, including but not limited to: (i) the protection and conservation of water resources and watersheds, by appropriate means, including but not limited to preserving the natural cover, preventing floods and soil erosion, protecting water quality and replenishing surface and ground water supplies; (ii) the protection and conservation of forests and land being used to produce timber crops; (iii) the protection and conservation of farmland; (iv) the protection of existing or planned park, recreation or conservation sites; (v) the protection and conservation of natural or scenic resources, including but not limited to soils, beaches, streams, flood plains, steep slopes or marshes; (vi) the protection of scenic areas for public visual enjoyment from public rights of way; (vii) the preservation of sites of historic, geologic or botanic interest; (viii) the promotion of sound, cohesive, and efficient land development by preserving open spaces between communities.

(2) "Interest in real property." Any right in real property, improvements thereto or water, whatsoever, including but not limited to a fee simple, easement, remainder, future interest, transferable development right (TDR), lease, license, restriction or covenant of any sort, option or contractual

interest or right concerning the use of or power to transfer property.

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

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

(5) "Local government unit."

(i) A county;

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

(iii) a municipal corporation or any similar general purpose unit of local government; or

(iv) any unit created by joint action of two or more local government units which is now or shall hereafter be authorized to be created by the General Assembly, including cooperation by two or more local government units in accordance with the former act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law, or 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).

(5.1) "Municipal corporation." A city, borough, incorporated town or township.

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

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

(2 amended Feb. 2, 2006, P.L.15, No.4)

Section 3. Planning Requirements.--The Department of Conservation and Natural Resources and the Department of Agriculture shall not acquire any interest in real property under the provisions of this act, unless said real property has been designated for open space uses in a resource, recreation, or land use plan submitted to and approved by the State Planning Board. A local government unit shall not acquire any interest in real property under the provisions of this act unless said real property has been designated for open space uses in a resource, recreation or land use plan recommended by the planning commission of the municipality in which the real property is located and adopted by the governing body of that municipality. Where the municipality in which the real property to be acquired is located has no planning commission, a local government unit shall not acquire any interest in real property under the provisions of this act unless said real property has been designated for open space uses in a resource, recreation or land use plan approved by the planning commission of the county in which the real property is located and adopted by the governing body of the municipality wherein the real property is located.

(3 amended Dec. 18, 1996, P.L.994, No.153)

Section 4. Applicability.--The Commonwealth of Pennsylvania, through the Department of Conservation and Natural Resources or the Department of Agriculture, may exercise the powers granted by this act only with the consent of the county

commissioners of the county in which the real property is situated. All local government units may exercise the powers granted by this act.

(4 amended Dec. 18, 1996, P.L.994, No.153)

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

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

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

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

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

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

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

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

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

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

(1) To protect and conserve farmland;

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

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

(c) (1) A local government unit may acquire any interest in real property situate within its boundaries by purchase, contract, condemnation, gift, devise or otherwise, for any of the purposes set forth in clauses (1) through (8) of subsection (a) of this section, and may acquire any interest in real property situate within its boundaries by purchase, contract, gift or devise, for any of the purposes set forth in clause (1) of subsection (b) of this section, including limiting the use of real property to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes set forth in clauses (1) through (7) of subsection (a) and clause (1) of subsection (b) of this section.

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

(5 amended Dec. 18, 1996, P.L.994, No.153)

Section 6. Public Hearing.--Interests in real property to be acquired pursuant to the provisions of this act shall be designated by the Department of Conservation and Natural Resources, the Department of Agriculture or a local government unit, whichever is acquiring them. After such designation, the said interests shall not be acquired until a public hearing is held and after notice to all owners of said interests in real property and to any local government unit in which land is situate, at which hearing the department or local government unit concerned shall set forth the interests to be taken and their proposed open space benefits. At the public hearing persons and municipalities affected by the proposed acquisition of interests in real property shall have an opportunity to present relevant evidence.

(6 amended Dec. 18, 1996, P.L.994, No.153)

Section 7. Property Acquired in Fee Simple.--If the owner of the interests in real property to be acquired pursuant to the provisions of this act prefers to have the Commonwealth or the local government unit acquire the property in fee simple, the Commonwealth or the local government unit shall be required to acquire the property in fee simple. All real property acquired in fee simple by the Commonwealth, through either the Department of Conservation and Natural Resources or the Department of Agriculture under the provisions of this act, shall be offered for resale publicly in the manner provided by law within two years of the date of acquisition, subject to restrictive covenants or easements limiting the land to such open space uses as may be specified by the designating department or agency in accordance with section 6 hereof, and consistent with the resource, recreation, or land use plan established in accordance with section 4 hereof. In the case of the Commonwealth, such resales may be made without specific authority of the General Assembly and shall be through the Department of General Services at public sale in the manner provided by law.

(7 amended Feb. 2, 2006, P.L.15, No.4)

Section 7.1. Local Taxing Options.--(a) A local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the statutory rate limits on real estate taxes set forth in the municipal code of that local government unit, an open space tax on real property not exceeding the millage authorized by referendum under subsection (a.3). In the alternative, a local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the earned income tax rate limit set forth in the act of December 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling Act," an open space tax on the earned income of the residents of that local government unit not exceeding the rate authorized by referendum under subsection (a.3). Revenue from the levy may only be used for the following:

(1) to retire the indebtedness incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing an open space benefit or benefits under the provisions of this act or the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law";

(2) for transactional fees that are incidental to acquisitions made in accordance with this act, including, but not limited to, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs;

(3) for expenses necessary to prepare the resource, recreation or land use plan required under section 3; or

(4) (i) annually, up to 25% of any accumulated balance of the fund from the levy authorized by referendum, to develop, improve, design, engineer and maintain property acquired pursuant to this act for an open space benefit or benefits; or

(ii) alternatively, for purposes of allocation, the local government unit may create a maintenance fund into which the local government unit may deposit in an amount up to 25% of the annual revenue from the levy authorized by referendum, to develop, improve, design, engineer and maintain property acquired pursuant to this act for an open space benefit or benefits.

(a.1) In no event, however, shall any revenue in a particular year be used to develop, improve, design, engineer and maintain the property acquired unless the annual debt service under subsection (a)(1) or acquisition fees under subsection (a)(2) will be satisfied. The acquisition fees shall be paid in their entirety at the time of acquisition.

(a.2) Nothing in subsection (a)(4) shall prevent a local government unit from using funds set aside for development, improvement, design, engineering and maintenance of real property for acquisition of real property to secure an open space benefit or benefits pursuant to subsection (a)(1).

(a.3) The local taxing option for an open space tax authorized by subsection (a) shall not be exercised unless the governing body of the local government unit shall by ordinance first provide for a referendum on the question of the imposition at a specific rate of the additional tax to be imposed and a majority of those voting on the referendum question vote in favor of the imposition of the tax. The additional tax shall not be repealed any sooner than five years after the imposition of the tax or when any indebtedness incurred for payment of the property or properties acquired has been repaid, whichever is later. The ordinance of the governing board of the local government unit providing for a referendum on the question shall be filed with the county board of elections. The referendum shall be governed by the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code." The election official shall cause the question to be submitted to the electors of the local government unit at the next primary, general or municipal election occurring not less than the thirteenth Tuesday following the filing of the ordinance with the county board of elections. At such election, the question shall be submitted to the voters in the same manner as other questions are submitted under the provisions of the "Pennsylvania Election Code." The question to be placed upon the ballot shall be framed in the following form:

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

(a.4) In local government units whose electors voted in a referendum pursuant to subsection (a.3) to impose the open space tax, whether before or after the effective date of this subsection, the method of repeal of the open space tax shall be by referendum, and the procedures for the filing of the ordinance and the conduct of the referendum shall be as set forth in subsection (a.3), except the question to be placed upon the ballot shall be framed in the following form:

Do you favor the continued imposition of the (describe tax in millage or earned income tax rate) by (local government unit) to be used to (purpose)?

If the referendum question passes, the open space tax shall continue to be imposed at the rate described in the question. If the referendum question fails, the increase in the rate limit of the real estate or the earned income tax provided for by subsection (a.3) shall be repealed effective in the fiscal year following the referendum. Regardless of whether the referendum question passes or fails, a referendum on either the reimposition of the open space tax pursuant to subsection (a.3) or the continued imposition of the open space tax pursuant to this subsection shall not be held any sooner than five years after the approval or disapproval of the referendum question.

(b) (1) Any of the following categories of real property may be exempted from further millage increases:

(i) Real property in which the open space property interests have been acquired by a local government unit in accordance with this act.

(ii) Real property that is subject to an easement acquired in accordance with the "Agricultural Area Security Law."

(iii) Real property from which TDRs have been transferred and retired by a local government unit without their development potential having occurred on other lands.

(2) The exemption from further millage increases authorized by clause (1) shall become effective only if the governing body of each taxing district that imposes a tax on the real property approves the exemption either by ordinance in the case of a county or municipal corporation or by resolution in the case of a school district.

(3) The exemption from further millage increases for real property as provided for in this subsection shall be authorized only for real property qualifying for such exemption under the provisions of section 2(b)(1) of Article VIII of the Constitution of Pennsylvania.

(4) If the governing body of each taxing district so resolves, the millage freeze authorized herein shall apply to all eligible real property, whether the real property met the criteria of this subsection prior to or subsequent to the date of the ordinances and resolution imposing the millage freeze. For prior acquisitions, the date on which the millage rate shall be frozen is the date that the last of the required ordinances or resolution becomes effective. For subsequent acquisitions, the date on which the millage rate shall be frozen is the date the local government unit completes the acquisition. The governing body of each taxing 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.

(5) 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.

(7.1 amended Dec. 18, 2013, P.L.1191, No.115)

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

(7.2 added Dec. 18, 1996, P.L.994, No.153)

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

(7.3 added Dec. 18, 1996, P.L.994, No.153)

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

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

(8 amended Dec. 18, 1996, P.L.994, No.153)

Section 9. Assessment.--Any open space property interest acquired by the Commonwealth or a local government unit under this act is held for public purposes, and shall be exempt from taxation. The assessment of private interests in land subject to open space property interests under this act shall reflect any change in market value of the property which may result from the acquisition of open space property interests by the Commonwealth or a local government unit.

(9 amended Dec. 18, 1996, P.L.994, No.153)

Section 10. Termination or Disposition of Open Space Property Interests.--(a) If the Commonwealth, through either the Department of Conservation and Natural Resources or the Department of Agriculture with the approval of the State Planning Board, or a county or county authority with the approval of its County Planning Commission, determines that it is essential for the orderly development of an area to terminate or sell open space property interests acquired under this act other than property held in fee simple, the Commonwealth or the county or county authority shall offer to transfer to the original property owner from whom said property interests other than fee simple were acquired, or his estate if the original property owner, or his estate, is the current property owner, said property interests at a price which shall be equal to the price paid by the Commonwealth or the county or county authority to the original property owner for said interests; and, if said

offer is not accepted within ninety days, the Commonwealth or the county or county authority shall then sell the open space property interests at public sale in the manner provided by law. In the case of the Commonwealth, such transfer or sale may be made without specific authority of the General Assembly, and shall be through the Department of General Services at public sale in the manner provided by law.

(b) If the local government unit, excluding counties and county authorities, with the approval of the planning commission serving the municipality in which the real property is located, determines that it is essential for the orderly development of an area to terminate or sell open space property interests acquired under this act other than property held in fee simple, the local government unit shall offer to transfer to the original property owner from whom said open space property interests other than fee simple were acquired, or his estate if the original property owner or his estate is the current property owner, said property interests at a price which shall be equal to the price paid by the local government unit to the original property owner for said interests. If the local government unit's offer is not accepted within ninety days, the local government unit shall then sell the open space property interests at public sale in the manner provided by law. Before any open space property interests are disposed of by a local government unit, the officials of the local government unit must first put the question to its electorate at the time and place of any general, municipal or primary election to determine if a majority of the voters participating in said election assent to the proposed disposition of the specific open space property interests.

(10 amended Dec. 18, 1996, P.L.994, No.153)

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

(10.1 added Dec. 18, 1996, P.L.994, No.153)

Section 11. Utility Rights of Way; Underground Gas Storage.--(a) The ownership by the Commonwealth or a local government unit of an open space property interest shall not preclude the acquisition, by lease, purchase, or eminent domain, and use of rights of way or underground gas storage rights in such property by a public utility or other body entitled to exercise the power of eminent domain. In the case of an acquisition from the Commonwealth by a body other than a public utility, such acquisition shall occur only if the State Planning Board, after public hearing with notice to the Department of Conservation and Natural Resources or the Department of Agriculture, as the case may be, shall approve such acquisition. In the case of an acquisition from a local government unit by a body other than a public utility, such acquisition shall occur only if the governing body, after public hearing with notice to the public, shall approve such acquisition. In the case of an acquisition from the Commonwealth or a local government unit by a public utility, such acquisition shall occur only if the Pennsylvania Public Utility Commission, after public hearing with notice to the Department of Conservation and Natural Resources, the Department of Agriculture or the local government unit, as the case may be, shall find that such acquisition and use are necessary or proper for the service, accommodation, convenience or safety of the public.

(b) (1) Notice of public hearing given in accordance with subsection (a) shall include a statement of the purpose of the

public hearing and the date, time and place of the public hearing.

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

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

(11 amended Dec. 18, 1996, P.L.994, No.153)

Section 11.1. Land Trusts.--(a) If the governing body of a local government unit deems it to be for the public benefit of the local government unit, it may:

(1) appropriate money to a land trust or a local land trust for the acquisition or conservation and preservation of interests in real property for the purpose of achieving open space benefits, provided that an appropriation for the acquisition or conservation and preservation of interests in real property for the purpose of achieving open space benefits within a local government unit other than the one that made the appropriation shall be made only pursuant to an intergovernmental cooperation agreement between the local government unit within which the open space benefits will be achieved and the local government unit making the appropriation; and

(2) transfer open space property interests to a land trust or local land trust and elect to accept any nominal consideration for the transfer it deems appropriate. Neither a land trust nor a local land trust shall acquire an interest in real property through eminent domain.

(b) Notwithstanding the provisions of 15 Pa.C.S. § 5302 (relating to number and qualifications of incorporators), a local government unit may incorporate a local land trust as a domestic nonprofit corporation. Whenever the governing body of a local government unit desires to create a local land trust under this section, it shall adopt an ordinance signifying its intention to do so. A local land trust shall function as a nonprofit corporation under 15 Pa.C.S. Pt. II Subpt. C Art. B (relating to domestic nonprofit corporations generally), except that the following shall apply:

(1) The business and affairs of a local land trust shall be managed under the direction of a board of directors who shall be chosen from the electors of the local government unit that incorporated the local land trust, and members of the board of directors of a local land trust shall serve at the pleasure of the governing body of the incorporating local government unit.

(2) A local land trust shall file an annual report with the governing body of the incorporating local government unit, which report shall make provisions for the accounting of revenues and expenses. The local land trust shall have its books, accounts and records audited annually in accordance with generally accepted auditing standards by an independent auditor who shall be a certified public accountant, and a copy of the audit report shall be attached to and be made a part of the annual report. A concise financial statement shall be published annually in a

newspaper of general circulation in the county where the local land trust is located.

(3) A local land trust shall be subject to 65 Pa.C.S. Ch. 7 (relating to open meetings).

(c) Money appropriated to a land trust or a local land trust under this section may be used for related expenses.

(d) As used in this section:

(1) "Land trust." A nonprofit organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), is registered with the Pennsylvania Commission on Charitable Organizations and which has among its primary purposes the acquisition or conservation and preservation of interests in real property for the purpose of achieving open space benefits.

(2) "Local government unit." A local government unit as defined in section 2(5). The term does not include a county authority.

(3) "Local land trust." A land trust incorporated by a local government unit.

(4) "Related expenses." Incidental expenses incurred by a land trust as transactional fees in the acquisition of interests in real property for the purpose of achieving open space benefits, including, but not limited to, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs.

(11.1 added Nov. 29, 2006, P.L.1418, No.154)

Section 12. Severability; Inconsistent Laws.--If any section, provision, or clause of this act shall be declared invalid or inapplicable to any persons or circumstances such action shall not be construed to affect the rest of the act or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to that extent.

Section 13. Effective Date.--This act shall take effect immediately.