
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 87

Session of
2005

INTRODUCED BY STEIL, BALDWIN, CALTAGIRONE, CLYMER, DALEY,
GEORGE, GRUCELA, HARHAI, HERMAN, LEACH, MANN, MELIO, O'NEILL,
ROSS, RUBLEY, SAYLOR, SCHRODER, E. Z. TAYLOR, WATSON,
YUDICHAK, HENNESSEY AND REICHLEY, JANUARY 25, 2005

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JANUARY 25, 2005

AN ACT

1 Amending the act of January 19, 1968 (1967 P.L.992, No.442),
2 entitled, as amended, "An act authorizing the Commonwealth of
3 Pennsylvania and the local government units thereof to
4 preserve, acquire or hold land for open space uses," defining
5 "municipal corporation"; further providing for property
6 acquired in fee simple and for local taxing option; and
7 making an editorial change.

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

10 Section 1. Sections 2, 7 and 7.1 of the act of January 19,
11 1968 (1967 P.L.992, No.442), entitled, as amended, "An act
12 authorizing the Commonwealth of Pennsylvania and the local
13 government units thereof to preserve, acquire or hold land for
14 open space uses," amended or added December 18, 1996 (P.L.994,
15 No.153), are amended to read:

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

18 (1) "Open space benefits." The benefits to the citizens of
19 the Commonwealth and its local government units which result

1 from the preservation or restriction of the use of selected
2 predominantly undeveloped open spaces or areas, including but
3 not limited to: (i) the protection and conservation of water
4 resources and watersheds, by appropriate means, including but
5 not limited to preserving the natural cover, preventing floods
6 and soil erosion, protecting water quality and replenishing
7 surface and ground water supplies; (ii) the protection and
8 conservation of forests and land being used to produce timber
9 crops; (iii) the protection and conservation of farmland; (iv)
10 the protection of existing or planned park, recreation or
11 conservation sites; (v) the protection and conservation of
12 natural or scenic resources, including but not limited to soils,
13 beaches, streams, flood plains, steep slopes or marshes; (vi)
14 the protection of scenic areas for public visual enjoyment from
15 public rights of way; (vii) the preservation of sites of
16 historic, geologic or botanic interest; (viii) the promotion of
17 sound, cohesive, and efficient land development by preserving
18 open spaces between communities.

19 (2) "Interest in real property." Any right in real property,
20 improvements thereto or water, whatsoever, including but not
21 limited to a fee simple, easement, remainder, future interest,
22 transferable development right (TDR), lease, license,
23 restriction or covenant of any sort, option or contractual
24 interest or right concerning the use of or power to transfer
25 property.

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

29 (4) "Open space uses." Land uses which are not inconsistent
30 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 [as defined in 1 Pa.C.S. § 1991 (relating to definitions)] 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.

Section 7. Property Acquired in Fee Simple.--If the owner of

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

20 Section 7.1. Local Taxing Options.--(a) A local government
21 unit, excluding counties and county authorities, may by
22 ordinance impose, in addition to the statutory rate limits on
23 real estate taxes set forth in the municipal code of that local
24 government unit, a tax on real property not exceeding the
25 millage authorized by referendum under this subsection. In the
26 alternative, a local government unit, excluding counties and
27 county authorities, may by ordinance impose, in addition to the
28 earned income tax rate limit set forth in the act of December
29 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling
30 Act," a tax on the earned income of the residents of that local

1 government unit not exceeding the rate authorized by referendum
2 under this subsection. Revenue from the levy shall be used to
3 retire the indebtedness incurred in purchasing interests in real
4 property or in making additional acquisitions of real property
5 for the purpose of securing an open space benefit or benefits
6 under the provisions of this act or the act of June 30, 1981
7 (P.L.128, No.43), known as the "Agricultural Area Security Law."
8 The local taxing option authorized by this subsection shall not
9 be exercised unless the governing body of the local government
10 unit shall by ordinance first provide for a referendum on the
11 question of the imposition at a specific rate of the additional
12 tax to be imposed and a majority of those voting on the
13 referendum question vote in favor of the imposition of the tax.
14 The ordinance of the governing board of the local government
15 unit providing for a referendum on the question shall be filed
16 with the county board of elections. The referendum shall be
17 governed by the provisions of the act of June 3, 1937 (P.L.1333,
18 No.320), known as the "Pennsylvania Election Code." The election
19 official shall cause the question to be submitted to the
20 electors of the local government unit at the next primary,
21 general or municipal election occurring not less than the
22 thirteenth Tuesday following the filing of the ordinance with
23 the county board of elections. At such election, the question
24 shall be submitted to the voters in the same manner as other
25 questions are submitted under the provisions of the
26 "Pennsylvania Election Code." The question to be placed upon the
27 ballot shall be framed in the following form:

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

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

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

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

(3) real property whose TDRs have been transferred and retired by a local government unit without their development potential having occurred on other lands; provided that the]

(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 act of June 30, 1981 (P.L.128, No.43), known as 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 [clause (1), (2) or (3) of] this

1 subsection shall be authorized only for real property qualifying
2 for such exemption under the provisions of section 2(b)(1) of
3 Article VIII of the Constitution of Pennsylvania. [If the board
4 so resolves]

5 (4) If the governing body of each taxing district so
6 resolves, the millage freeze authorized herein shall apply to
7 all eligible real property, whether the real property met the
8 criteria of this subsection prior to or subsequent to the date
9 of the ordinances and resolution imposing the millage freeze.
10 For prior acquisitions, the date on which the millage rate shall
11 be frozen is the date [of the resolution] that the last of the
12 required ordinances or resolution becomes effective. For
13 subsequent acquisitions, the date on which the millage rate
14 shall be frozen is the date the local government unit completes
15 the acquisition. The [school district] governing body of each
16 taxing district shall give prompt notice to the appropriate tax
17 collection agent of the exact amount of the millage, the date it
18 was frozen and each parcel to which the freeze applies.

19 (5) The exemptions granted under this act shall not be
20 considered by the State Tax Equalization Board in deriving the
21 market value of school district real property so as to reduce
22 the subsidy to that school district or to increase the subsidy
23 to any other school district.

24 Section 2. This act shall take effect in 60 days.