

**UNOFFICIAL COPY:  
AGRICULTURAL AREA SECURITY LAW**

The following is an unofficial copy of the Agricultural Area Security Law (Act of June 30, 1981, P.L. 128, No. 43)(3 P.S. §§ 901-915). The document reflects all revisions to this statute, through Act 14 of 2001. The document is "unofficial" because it has been retyped. Any discrepancies between this document and the official statute shall be resolved in favor of the official statute. This document has been prepared by the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation.

Section numbers refer to the corresponding section in Title 3 of Purdon's Statutes. For example: "Section 913" refers to 3 P.S. § 913.

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**CHAPTER 14A**

**AGRICULTURAL SECURITY AREA**

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## **§ 901. Short Title**

This act shall be known and may be cited as the “Agricultural Area Security Law.” 1981, June 30, P.L. 128. No 43, § 1, effective in 60 days.

## **§ 902. Statement of legislative findings**

It is the declared policy of the Commonwealth to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the declared policy of the Commonwealth to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air, as well as for aesthetic purposes. Article VIII, section 2 of the Constitution of Pennsylvania provides that the General Assembly may, by law, establish standards and qualification for agricultural reserves. Agriculture in many parts of the Commonwealth is under urban pressure from expanding metropolitan areas. This urban pressure takes the form of scattered development in wide belts around urban areas, and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation. When this scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements. Many of the agricultural lands in the Commonwealth are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of Statewide importance. It is the purpose of this act to provide the means by which agricultural land may be protected and enhanced as a viable segment of the Commonwealth’s economy and as an economic and environmental resource of major importance.

It is further the purpose of this act to:

- (1) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- (2) Protect farming operations in agricultural security areas from incompatible nonfarm land uses that may render farming impracticable.
- (3) Assure permanent conservation of productive agricultural lands in order to protect the agricultural economy of this Commonwealth.
- (4) Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- (5) Leverage State agricultural easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

## **§ 903. Definitions**

The following words and phrases when used in this act shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

“**Advisory Committee.**” An Agricultural Security Area Advisory Committee.

**“Agricultural conservation easement.”** An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production. The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement shall not be deemed to be management or control of activities at the site for purposes of enforcement of the act of October 18, 1988 (P.L. 756, No. 108), known as the “Hazardous Sites Cleanup Act.”<sup>1</sup>

**“Agricultural production.”** The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50% of such processed or merchandised products are produced by the farm operator. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

**“Agricultural Security Area.”** A unit of 250 or more acres of land used for the agricultural production of crops, livestock and livestock products under the ownership of one or more persons and designated as such by the procedures set forth in this act or designated as such pursuant to the act of January 19, 1968 (1967 P.L. 992, No. 442), entitled “An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses,”<sup>2</sup> prior to the effective date of this amendatory act, by the governing body of the county or governing body of the municipality in which such agricultural land is located on the basis of criteria and procedures which predate the effective date of this amendatory act: Provided, That an owner of the land designated as such under the authority of the act of January 19, 1968 (1967 P.L. 992, No. 442) may withdraw such land from an agricultural security area by providing written notice of withdrawal to the county governing body or governing body of the municipality in which such land is located within 180 days of the effective date of this amendatory act.

**“County board.”** The County Agricultural Land Preservation Board.

**“County governing body.”** The county board of commissioners or other designated council of representatives under home rule charters.

**“County planning commission.”** A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

**“Crops, livestock and livestock products.”** Include but are not limited to:

- (1) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- (2) Fruits, including apples, peaches, grapes, cherries and berries.
- (3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.
- (4) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.

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<sup>1</sup> 35 P.S. § 6020.101 *et seq.*

<sup>2</sup> 32 P.S. § 5001 *et seq.*

(5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(6) Timber, wood and other wood products derived from trees.  
Aquatic plants and animals and their byproducts.

**“Crops unique to the area.”** Include, but are not limited to, crops which historically have been grown or have been grown within the last five years in the region and which are used for agricultural production in the region.

**“Department.”** The Department of Agriculture of the Commonwealth.

**“Description of the proposed area.”** A complete and accurate list of the name or names of the owner or owners of each parcel of land to be included in the proposed agricultural security area, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. Such description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except when an individual parcel included in the agricultural security area shall represent less than the entire amount of contiguous land contained in the property of an owner.

**“Eligible counties.”** Counties whose easement purchase programs have been approved by the State Agricultural Land Preservation Board. For the purpose of annual allocations, an eligible county must have its easement purchase program approved by the State Agricultural Land Preservation Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

**“Farmland value.”** The price as of the valuation date for property used for normal farming operations which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

**“Fiscal year.”** Fiscal year of the Commonwealth.

**“Fund.”** The Agricultural Conservation Easement Purchase Fund established by the act of May 13, 1988 (P.L. 398, No. 64), entitled “An act amending the act of June 18, 1982 (P.L. 549, No. 159), entitled ‘An act providing for the administration of certain Commonwealth farmland within the Department of Agriculture,’ providing for the disposition of proceeds from the sale of certain land, equipment or facilities.”<sup>3</sup>

**“Governing body.”** The governing body of a local government unit.

**“Immediate family member.”** A brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, father or mother of the landowner.

**“Joint ownership.”** Joint tenancy in an agricultural conservation easement purchase as the interests of the parties appear.

**“Local government unit.”** Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

**“Market value.”** The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

**“Normal farming operations.”** The customary and generally accepted activities, practices, and procedures that farmers adopt, use, or engage in year after year in the

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<sup>3</sup> 3 P.S. § 1201 *et seq.*

production and preparation for market of crops, livestock, and livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities. The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

**"Parcel."** A tract of land in its entirety which is assessed for tax purposes by one county including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or either in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

**"Planning commission."** A local government planning commission or agency which has been designated by the governing body of the local government unit to establish and foster a comprehensive plan for land management and development within the local government unit.

**"Secretary."** The Secretary of Agriculture of the Commonwealth.

**"State board."** The State Agricultural Land Preservation Board.

**"Viable agricultural land."** Land suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

#### **§ 904. Agricultural Security Area Advisory Committee**

The governing body of any local government may establish an Agricultural Security Area Advisory Committee which shall consist of three active farmers, each representing a different private or corporate farm, and one citizen residing within the unit of local government and one member of the governing body of such local government, who shall serve as the chairman of the committee. Such a committee shall be established when a proposal is received by the governing body for the creation of an agricultural security area. Pursuant to this act the members of such committee shall be appointed by and shall serve at the pleasure of the chairman of the governing body. The members shall serve without salary, but the governing body may entitle each such member to reimbursement for his actual and necessary expenses incurred in the performance of his official duties. Such committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, and termination of agricultural security areas. In particular, the committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the local government unit as a whole.

## § 905. Agricultural security areas

**(a) Proposals for creation.**—Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the creation of an agricultural security area within such local government unit, provided that such owner or owners own at least 250 acres of viable agricultural land proposed to be included in the area. The proposed area may also consist of any number of noncontiguous tax parcels or accounts: Provided, That each tax parcel or account is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from the agricultural production of crops, livestock and livestock products on such parcel or account.

**(a.1) Submitting the proposal.**—Such proposal for creation of an agricultural security area shall be submitted in such a manner and form as may be prescribed by the governing body of the local government unit wherein the proposed area is situated and shall include a description of the proposed area, including the boundaries thereof. Such proposal to the governing body shall be submitted by certified mail with return receipt requested. The return receipt shall serve as notice of the official receipt of the proposal by the governing body and shall verify the official submission date.

### **(a.2) Proposals for agricultural security areas in more than one local government unit.**—

(1) Except as provided in paragraph (2), if the land included in a proposal for an agricultural security area is situated in more than one local government unit, the following shall apply:

(i) The proposal shall be submitted to, and approval of the proposal shall be sought from, the governing body of each such local government unit affected.

(ii) The governing bodies may cooperate in the review of a proposed agricultural security area and may provide joint public notices, a joint agricultural security area advisory committee and a joint public hearing on the security area.

(iii) A rejection by a governing body shall exclude that portion of the proposal which is situated within the local government unit. However, such rejection shall not preclude the approval of the remaining portion of the proposal, including land subject to paragraph (2), as an agricultural security area by the governing body of the other affected local government units, provided that the total acreage approved is at least 250 acres and that such approved portion meets all other requirements imposed under this act for agricultural security areas.

(2) Automatic inclusion shall be as follows:

(i) All land which is part of a parcel of farmland included in the proposal and transected by the dividing line between two local government units shall automatically become part of the agricultural security area if:

(A) the majority of the viable agricultural land of the parcel is located within the proposed agricultural security area; and

(B) the local government unit in which the minority of the viable agricultural land of the parcel is located has not approved an agricultural security area.

(ii) The governing body which approves the agricultural security area containing the land under subparagraph (i)(A) is responsible for recording, filing and notification under section 8 for the land added under this paragraph.

**(a.3) Fees.**—Except as provided in this subsection, a governing body shall not require landowners included in a proposed agricultural security area to pay any fees in connection with the application for or the review of agricultural security areas as required in this section and sections 6, 7, 8 and 9.<sup>4</sup> A governing body may be resolution impose reasonable filing fees in connection with the administration and review of an agricultural security area application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body had rejected within the last 36 months based on the recommendations of the Agricultural Security Area Advisory Committee and the planning commission.

**(b) Notice.**—Upon the receipt of such a proposal, the governing body shall acknowledge receipt of the proposal at the next regular or special meeting and shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed agricultural security area and by posting such notice in five conspicuous places within, adjacent or near to the proposed area. If the governing body fails to provide the required notice within 15 days of receiving a proposal as provided in this subsection, a person who is adversely affected by this inaction may bring an action in mandamus to complete compliance. The notice shall contain the following information:

(1) A statement that a proposal for an agricultural security area has been filed with the governing body pursuant to this act.

(2) A statement that the proposal will be on file open to public inspection in the office of the local government unit.

(3) A statement that any local government unit encompassing or adjacent to the proposed area, or any landowner who owns the land proposed to be included within the proposed area, or any landowner with lands adjacent or near the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 15 days of the date of publication of the notice.

(4) A statement that at the termination of the 15-day period under paragraph (3), the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

**(c) Modification proposals.**—The governing body shall receive any proposals for modifications of such proposal which may be submitted by such landowners or local government units up to seven days prior to advertisement of public hearing as provided in section 6(a).

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<sup>4</sup> 3 P.S. §§ 906, 907, 908 and 909.

**(d) Report by planning commission.—**

(1) For a planning commission which is not a county planning commission, the following shall apply:

(i) The governing body shall, upon the termination of the 15-day period provided in subsection (b)(3), refer such proposal and proposed modifications to the planning commission.

(ii) The planning commission shall have up to 45 days to review the proposal and proposed modifications and report to the governing body the potential effect of such proposal and proposed modifications upon the local government's planning policies and objectives.

(iii) The failure of the planning commission to submit a report within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commission.

(2) For a county planning commission, the following shall apply:

(i) The governing body shall, upon the termination of the 15-day period provided in subsection (b)(3), refer such proposal and proposed modifications to the county planning commission.

(ii) The county planning commission shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications.

(iii) The failure of the county planning commission to submit a report within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the county planning commission.

**(e) Referral to advisory committee.—**The governing body shall also, upon the termination of such 15-day period, refer such proposal and proposed modifications to the Agricultural Security Area Advisory Committee.. The committee shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications. The failure of the advisory committee to submit a report within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.

## **§ 906. Public hearings**

**(a) Hearings.—**The governing body shall hold a public hearing relative to the proposed agricultural security area upon receipt of the reports from the advisory committee and the planning commission or upon expiration of the 45-day period as provided in section 5.<sup>5</sup>

**(b) Place of hearing.—**The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building.

**(c) Notice of hearing.—**Pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act,"<sup>6</sup> a hearing notice shall be published in a newspaper having a

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<sup>5</sup> 3 P.S. § 905.

general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications pursuant to section 5(c) or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area. Such notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commission or advisory committee.
- (3) A statement that the public hearing will be held concerning:
  - (i) The original proposal.
  - (ii) Any written amendments proposed during the review period.
  - (iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

### **§ 907. Evaluation criteria**

**(a) Factors to be considered.**—The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

(1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Soil Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Soil Conservation Service classification of “unique farm land”; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.

(2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.

(3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.

(4) The land proposed for inclusion in the agricultural security area, and any additions which are proposed subsequently, shall be viable agricultural land.

(5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.

**(b) Resource Materials.**—In considering the viability factors as set forth in this section, various resource materials shall be used, including, but not limited to, the following:

- (1) Soil surveys of the Pennsylvania State University.
- (2) Soil surveys and other information provided by the National Cooperative Soils

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<sup>6</sup> 65 P.S. § 271 *et seq.*

Survey.

(3) Soil survey maps prepared by the United States Soils Conservation Service.

(4) The United State census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State, or Federal agency.

### **§ 908. Decision on proposed area**

**(a) Action by governing body.**—The governing body, upon completion of the procedures and considerations prescribed in sections 5, 6, and 7,<sup>7</sup> may adopt the proposal or any modification of the proposal the governing body deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands if the land owner has made application to be included, and the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The existence of utility facilities on the proposed area shall not prevent the adoption of such area as an agricultural security area nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such adoption. The governing body shall act to adopt or reject the proposal, or any modification, no later than 180 days from the date the proposal was originally submitted. Failure by the governing body to act within this 180-day period shall be deemed adoption of the proposal without modification.

**(b) Notification by governing body of reasons for rejection.**—Within ten days of the governing body's decision to reject or modify the proposal, the governing body shall submit to the owner or owners of the land a written decision stating why the proposal was not adopted or was modified. The written decision shall include a finding of fact, review of the evaluation criteria prescribed in section 7<sup>8</sup> and a discussion of reasons for rejection or modification of the proposal.

**(c) Effective date of creation of area.**—An agricultural security area shall become effective upon the adoption of the proposal or its modification by the governing body or upon expiration of the 180-day period as provided in subsection (a). If the proposal has included land situated in more than one local government unit, the agricultural security area shall become effective upon adoption by the local government unit or units of such portion of the proposal or proposed modifications as will meet the minimum acreage and other requirements of an agricultural security area provided in this act. Subsequent adoption of the remaining portion shall immediately effectuate such portion as an agricultural security area.

**(d) Filing of area description.**—Within ten days of the creation of an agricultural security area, a description thereof shall be filed by the governing body with the recorder of deeds, who shall record the description, and with the planning commissions of the county and of the local government unit. Recording shall be done in a manner which is sufficient to give notice to all persons who have, may acquire or may seek to acquire an

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<sup>7</sup> 3 P.S. §§ 905, 906 and 907.

<sup>8</sup> 3 P.S. § 907.

interest in land in or adjacent to the created agricultural security area. Upon the failure of the governing body to file a description or recorder of deeds to record the created agricultural security area in accordance with the time or manner requirements prescribed in this subsection, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with the provisions of this subsection.

**(e) Participation.**—Participation in the agricultural security area shall be available on a voluntary basis to landowners within the jurisdiction of the governing body including those not among the original petitioners. The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body.

**(f) Additions of land to agricultural security area during the seven-year period.**—The addition of land to the agricultural security area may occur at any time during the seven-year period provided for in section 9.<sup>9</sup> Land may be added to an existing agricultural security area located entirely outside the local government unit in which the proposed land is located: Provided That, prior to the submission of the proposal, the local government unit in which the proposed land is located and each local government unit in which the existing agricultural security area is located have adopted an ordinance or resolution allowing all land to be part of an individual agricultural security area located or to be located in all such local government units. Any proposal for such addition, and for approval or disapproval thereof, shall follow all the procedures and requirements of sections 5, 6 and 7<sup>10</sup> and this section for proposal, consideration and decision as to approval or disapproval of the original agricultural security area except that there shall be no requirement that any proposal for such addition include at least 250 acres of viable agricultural land. If the land comprising the additional proposal could be added to more than one existing agricultural security area, or shall lie in more than one local government unit, the proposal shall be considered as an addition to the agricultural security area which was first approved. Land added to an existing agricultural security area during any seven-year period shall be reviewed at the same time as all other land in the agricultural security area.

**(g) Notification to secretary.**—Within ten days of the recording of the agricultural security area, the governing body shall notify the Secretary of Agriculture that the area has been approved and recorded, modified or terminated. Such notification shall be in writing and shall include the number of landowners, the total acreage of the area, the date of approval by the governing body and the date of recording. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.

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<sup>9</sup> 3 P.S. § 909.

<sup>10</sup> 3 P.S. §§ 905, 906 and 907.

## § 909. Review of area

**(a) Review by governing body.**—The governing body shall review any area created under section 8<sup>11</sup> seven years after the date of its creation and every seven years thereafter. In conducting such review, the governing body shall ask for the recommendations of the planning commission, the county planning commission and the advisory committee, and shall, at least 120 days prior to the end of the seventh year and not more than 180 days prior to the such date, hold a public hearing at a place within the area or otherwise readily accessible to the area. Prior to the commencement of such review, notice thereof shall be given by publication in a newspaper having a general circulation with the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land within the area that the agricultural security area will be reviewed in accordance with law. All such notices shall be given 30 days before the commencement of such review. Persons wishing to modify the area shall submit proposed modifications within 30 days of the date of such notices. Thereafter, in conducting such review the governing bodies shall follow all the procedures and requirements of sections 5, 6, 7 and 8<sup>12</sup> for the consideration of the agricultural security area and proposed modifications thereto. Within ten days of its action of termination or modification, the governing body shall file a notice of termination or modification with the recorder of deeds, who shall record such notice in such manner and place as has been provided in the original recording of the agricultural security area. The governing body shall also file a notice of termination or modification with the planning commissions of the county and of the local government unit. If the governing body does not act, or if a modification of an area is rejected, the area shall be deemed to be readopted without modification for another seven years.

**(b) Interim review.**—If, within the seven-year period, 10% of the land within the agricultural security area is diverted to residential or nonagricultural commercial development, the governing body may review the diversion and may request, in writing, that the local and county planning commissions and the agricultural security area advisory committee study its review and make recommendations within 30 days of the written request. The governing body shall thereupon conduct a public hearing, after providing the same notice as that which is required under section 6(c).<sup>13</sup> The hearing shall be held no sooner than 45 days after the governing body has submitted written requests for review and recommendation to the planning commissions and advisory committee. The governing body then may terminate or modify the agricultural security area.

## § 910. Appeals

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area

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<sup>11</sup> 3 P.S. § 908.

<sup>12</sup> 3 P.S. §§ 905, 906, 907 and 908.

<sup>13</sup> 3 P.S. § 906(c).

may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

### **§ 911. Limitation on local regulations**

**(a) General rule.**—Every municipality or political subdivision within which an agricultural security area is created shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices within the area in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.

**(b) Public nuisance.**—Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance shall exclude from the definition of such nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area as permitted by this act if such agricultural activity or operation does not bear a direct relationship to the public health and safety.

### **§ 912. Policy of Commonwealth agencies**

It shall be the policy of all Commonwealth agencies to encourage the maintenance of viable farming in agricultural security areas and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety, with the provisions of any Federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of Federal agencies, including provisions applicable only to obtaining Federal grants, loans, or other funding.

### **§ 913. Limitation on certain governmental actions**

**(a) Approval required for condemnation and for certain other actions by an agency of the Commonwealth.**—No agency of the Commonwealth having or exercising powers of eminent domain shall condemn for any purpose any land within any agricultural security area which land is being used for productive agricultural purposes (not including the growing of timber) unless prior approval has been obtained in accordance with the criteria and procedures established in this section from the Agricultural Lands Condemnation Approval Board as established in section 306 of the act of April 9, 1929 (P.L. 177, No. 175), known as “The Administrative Code of 1929.”<sup>14</sup> The condemnation approval specified by this subsection shall not be required for an underground public utility facility or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.

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<sup>14</sup> 71 P.S. § 106.

In addition, all State-funded development projects which might affect land in established agricultural security areas shall be reviewed by the appropriate local agricultural advisory committee and by the Agricultural Lands Condemnation Approval Board. Each reviewing body may suggest any modification to the State-funded development projects which ensures the integrity of the agricultural security areas against non-farm encroachment.

**(b) Approval required for condemnation by a political subdivision, authority, public utility or other body.**—No political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land within any agricultural security area for any purpose, unless prior approval has been obtained from Agricultural Lands Condemnation Approval Board and from each of the following bodies: the governing bodies of the local government units encompassing the agricultural security area, the county governing body, and the Agricultural Security Area Advisory Committee. Review by the Agricultural Lands Condemnation Approval Board and the other indicated bodies shall be in accordance with the criteria and procedures established in this section. The condemnation approvals specified by this subsection shall not be required for an underground public utility facility or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission, regardless of whether the right to establish and maintain such underground or other public utility facility is obtained by condemnation, or by agreement with the owner.

**(c) Notice.**—Any condemner wishing to condemn property the approval for which is required under this section shall at least 30 days prior to taking such action notify each of the foregoing bodies that such action is contemplated, and no such condemnation shall be effective until 60 days following the receipt of such notice.

**(d) Review by Agricultural Lands Condemnation Approval Board and other bodies.**—

(1) Upon receipt of such notice the Agricultural Lands Condemnation Approval Board and the bodies provided for in subsection (b) jointly shall review the proposed condemnation in accordance with the applicable criteria established in paragraph (2).

(2)

(i) In the case of condemnation for highway purposes (but not including activities relating to existing highways such as, but not limited to, widening roadways, the elimination of curves or reconstruction, for which no approval is required) and in the case of condemnation for the disposal of solid or liquid waste material, the Agricultural Lands Condemnation Approval Board or other appropriate reviewing body shall approve the proposed condemnation only if it determines there is no reasonable and prudent alternative to the utilization of the land within the agricultural security area for the project.

(ii) In all other cases not otherwise specifically provided for, the Agricultural Lands Condemnation Approval Board or other appropriate reviewing body shall approve the proposed condemnation only if it determines that:

(A) the proposed condemnation would not have an unreasonably adverse affect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plans of the county, municipality and the Commonwealth, or upon the goals, resource plans, policies or objectives thereof; or

(B) there is no reasonable and prudent alternative to the utilization of the lands within the agricultural security area for the project.

**(e) Public hearings.**—Within such 60-day period the Agricultural Lands Condemnation Approval Board and other indicated bodies, as appropriate, shall hold a public hearing concerning the proposed condemnation at a place within or otherwise readily accessible to the area. Timely notice of such hearing shall be placed in a newspaper having a general circulation within the area and a written notice shall be posted at five conspicuous places within or adjacent to the area. Individual written notice shall also be given to all local government units encompassing all or part of the area, to the proposed condemnor, and to the owners of the land proposed to be condemned.

**(f) Findings and decisions.**—The Agricultural Lands Condemnation Approval Board and other indicated bodies, as appropriate, shall render findings and decisions on or before the expiration of such 60-day period and likewise within such period shall report the same to the proposed condemnor, the local government units affected and any party who files an appearance at such hearing. If the Agricultural Lands Condemnation Approval Board or any other indicated body fails to act within the 60-day period, the condemnation shall be deemed approved.

**(g) Injunctions.**—The Agricultural Lands Condemnation Approval Board may request the Attorney General or the bodies may request their solicitor to bring an action to enjoin any such condemnor from violating any of the provisions of this section.

**(h) Emergencies excepted.**—This section shall not apply to any emergency project which is immediately necessary for the protection of life or property.

#### **§ 914.1. Purchase of agricultural conservation easements**

**(a) State Agricultural Land Preservation Board.**—The Department of Agriculture and the State Agricultural Land Preservation Board shall administer pursuant to this section a program for the purchase of agricultural conservation easements by the Commonwealth.

(1) There is established within the Department of Agriculture as a departmental board the State Agricultural Land Preservation Board. The State board shall consist of 17 members.

(i) There shall be eight voting ex officio members of the State board: the Secretary of Agriculture, who shall serve as the board chairman; the Secretary of Community and Economic Development, or his designee; the Secretary of Environmental Protection, or his designee; the Chairman and the Minority Chairman of the House Agriculture and Rural Affairs Committee, or their designees; the Chairman and the Minority Chairman of the Senate Agriculture and Rural Affairs Committee, or their designees; and the Dean of the College of Agricultural Sciences of The Pennsylvania State University, or his designee.

(ii) Five members shall be appointed by the Governor. One member shall be a current member of the governing body of a county, one member shall be a person who is recognized as having significant knowledge in agricultural fiscal and financial matters, one member shall be an active resident farmer of this Commonwealth, one member shall be a residential, commercial or industrial building contractor, and one member shall be a current member of a governing body. Initially, two members shall be appointed for a term of four years, two members shall be appointed for a term of three years and one member shall be appointed for a term of two years. Thereafter, the terms of all members appointed herein shall be four years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Members may be reappointed to successive terms.

(iii) One member each shall be appointed by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President pro tempore of the Senate and the Minority Leader of the Senate, who shall, at the time of appointment, be resident farm owners and operators of at least one commercial farm in this Commonwealth. The initial term of the appointee of the President pro tempore of the Senate shall be four years, the initial term of the appointee of the Speaker of the House of Representatives shall be three years, the initial term of the appointee of the Minority Leader of the Senate shall be two years and the initial term of the appointee of the Minority Leader of the House of Representatives shall be one year. Thereafter, the terms of all appointees shall be four years. An appointment made to fill an unexpired term shall be only for the duration of the unexpired term. Members may be reappointed to successive terms.

(2) Nine members shall constitute a quorum for purposes of conducting meetings and official actions pursuant to authority given to the State board under this act.

(3) It shall be the duty and responsibility of the State board to exercise the following powers:

(i) To adopt rules and regulations pursuant to this act: Provided, That the board shall have the power and authority to promulgate, adopt, publish and use guidelines for the implementation of this act until September 30, 1990, or the effective date of final rules and regulations, whichever first occurs, pending adoption of final rules and regulations. Guidelines proposed under the authority of this section shall be subject to review by the General Counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L. 950, No. 164)<sup>15</sup>, known as the

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<sup>15</sup> 71 P.S. § 732-101 *et seq.*

“Commonwealth Attorneys Act,” but shall not be subject to review pursuant to the act of June 25, 1982 (P.L. 633, No. 181)<sup>16</sup>, known as the “Regulatory Review Act.”

(ii) To adopt rules of procedure and bylaws governing the operations of the State board and the conduct of its meetings.

(iii) To review, and accept or reject, the recommendation made by a county board for the purchase of an agricultural conservation easement by the Commonwealth.

(iv) To execute agreements to purchase agricultural conservation easements in the name of the Commonwealth if recommended by a county and approved by the State board as provided in subparagraph (iii).

(v) To purchase in the name of the Commonwealth agricultural conservation easements if recommended by a county and approved by the State board as provided in subparagraph (iii).

(vi) To purchase agricultural conservation easements jointly with a county if recommended by a county and approved by the State board as provided in subparagraph (iii).

(vii) To allocate State moneys among counties for the purchase of agricultural conservation easements, in accordance with provisions of subsection (g).

(viii) To establish and maintain a central repository of records which shall contain records of county programs for purchasing agricultural conservation easements, records of agricultural conservation easements purchased by local government units, by local government units and counties and by local government units and the Commonwealth and records of agricultural conservation easements purchased by the Commonwealth. All records indicating the purchase of agricultural conservation easements shall refer to and describe the farm land subject to the agricultural conservation easement.

(ix) To record agricultural conservation easements purchased by the Commonwealth or jointly owned, in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located.

(x) To establish and publish the standards, criteria and requirements necessary for State board approval of county programs for purchasing agricultural conservation easements.

(xi) To review and certify and approve, or disapprove, county programs for purchasing agricultural conservation easements.

(xii) To exercise other discretionary powers as may be necessary and appropriate for the exercise and performance of its duties, powers and responsibilities under this act.

(xiii) To determine an annual easement purchase threshold.

(xiv) To review and approve or disapprove for recertification each county program for the purchase of agricultural conservation easements.

(xv) To authorize the development of a guidebook defining all technical elements necessary for a complete application for purchase of an agricultural conservation easement. Such guidebook shall include model formats of the specific components of applications. Guidebooks shall be distributed to every

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<sup>16</sup> 71 P.S. § 745.1 *et seq.*

county with an approved program for purchasing agricultural conservation easements.

(4) The State board is authorized to:

(i) Take the actions necessary to qualify for Federal guarantees and interest rate assistance for agricultural easement purchase loans under Chapter 2 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624, 104 Stat. 3616).

(ii) Segregate from the Agricultural Conservation Easement Purchase Fund, into a Farms for the Future Trust Fund, funds necessary to qualify for the maximum amount of funding made available under the Federal act. There shall be deposited in this trust fund, and are appropriated for the purposes of this act, any interest rate assistance subsidies provided by participation in the Federal program. The State board is authorized to deposit interest accruing on moneys in the trust fund, in excess of the amounts needed to satisfy interest payments, in the Agricultural Conservation Easement Purchase Fund.

**(b) County programs.**—After the establishment of an agricultural security area by the governing body, the county governing body may authorize a program to be administered by the county board for purchasing agricultural conservation easements from landowners whose land is either within an agricultural security area or in compliance with the criteria set forth in paragraph (2)(i).

(1) The county board shall be composed of five, seven or nine members appointed by the county governing body. The chairman of the county governing body shall designate annually one member of the county board to serve as chairman of the county board. County board members shall be appointed from among the following groups: the number of farmers shall constitute one less than a majority of the board; one member shall be a current member of the governing body of a township or borough located within the county; one member shall be a commercial, industrial or residential building contractor; and the other members shall be selected at the pleasure of the county governing body. The county board membership of the member of the governing body of a township or borough located within the county shall be deemed vacant upon vacancy in, or the expiration of the term of, the township or borough office to which the member was elected. The term of the initial farmer appointees shall be three years, the initial term of the current member of the governing body of a township or borough shall be two years and the initial term of all other members shall be one year. Thereafter, the term of all members shall be three years.

(2) It shall be the duty and responsibility of the county board to exercise the following powers:

(i)

(A) To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements in accordance with the provisions of this act, including, but not limited to, rules and regulations governing the submission of applications by landowners, establishing standards and procedures for the appraisal of property eligible for purchase as an agricultural conservation easement

and establishing standards and procedures for the selection or purchase of agricultural conservation easements.

(B) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements by the county solely or jointly with either the Commonwealth or a local government unit, or both, on that portion of a parcel which is not within an agricultural security area if all of the following criteria are complied with:

(I) The land is part of a parcel of farm land which is bisected by the dividing line between two local government units.

(II) The majority of the farm's viable agricultural land is located within an existing agricultural security area. Upon purchase of an easement covering the portion of the parcel which is not located within an agricultural security area, that portion of the parcel shall immediately become part of the previously established agricultural security area which contains a majority of the farm's viable agricultural land. The governing body which created the agricultural security area which contains a majority of the farm's viable agricultural land shall be responsible for the recording, filing and notification outlined in section 8(d) and (g)<sup>17</sup> concerning land added to the agricultural security area pursuant to this clause.

(C) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements by the county solely or jointly with either the Commonwealth or a local government unit, or both, on that portion of a parcel located in an adjoining county if all of the following criteria are complied with:

(I) The land is part of a parcel of farm land which is bisected by the dividing line between the purchasing county and the adjoining county.

(II) Either a mansion house is located on that portion of the parcel which is within the purchasing county or the dividing line between the counties bisects the mansion house and the owner of the parcel has chosen the purchasing county as the situs of assessment for tax purposes, or, if there is no mansion house on the parcel, the majority of the farm's viable agricultural land is located in the purchasing county.

(III) The portion of the parcel located within the purchasing county is within an agricultural security area. Upon purchase of an easement by the purchasing county covering that portion of the parcel located in an adjoining county, the portion of the parcel located in the adjoining county shall immediately become part of the agricultural security area previously established in the purchasing county. The governing body which created the agricultural security area in the purchasing county shall be responsible for the recording, filing and notification outlined in

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<sup>17</sup> 3 P.S. § 908(d) and (g).

section 8(d) and (g)<sup>18</sup> concerning land added to the agricultural security area pursuant to this clause.

(ii) To adopt rules of procedure and bylaws governing the operation of the county board and the conduct of its meetings.

(iii) To execute agreements to purchase agricultural conservation easements in the name of the county.

(iv) To purchase in the name of the county agricultural conservation easements either within agricultural security areas or pursuant to the criteria set forth in subparagraph (i).

(v) To use moneys appropriated by the county governing body from the county general fund to hire staff and administer the county program.

(vi) To use moneys appropriated by the county governing body from the county general fund or the proceeds of indebtedness incurred by the county and approved by the county governing body for the purchase of agricultural conservation easements either within agricultural security areas or pursuant to the criteria set forth in subparagraph (i).

(vii) To establish and maintain a repository of records of farm lands which are subject to agricultural conservation easements purchased by the county.

(viii) To record agricultural conservation easements purchased by the county in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located and to submit to the State board a certified copy of agricultural conservation easements within 30 days after recording. The county board shall attach to all certified copies of the agricultural conservation easements submitted to the State board a description of the farm land subject to the agricultural conservation easements.

(ix) To submit to the State board for review the initial county program and any proposed revisions to approved county programs for purchasing agricultural conservation easements.

(x) To recommend to the State board for purchase by the Commonwealth agricultural conservation easements within agricultural security areas located within the county.

(xi) To recommend to the State board the purchase of agricultural conservation easements by the Commonwealth and the county jointly.

(xii) To purchase agricultural conservation easements jointly with the Commonwealth.

(xiii) To exercise other powers which are necessary and appropriate for the exercise and performance of its duties, powers and responsibilities under this act.

(xiv) To submit to the State board applications for agricultural conservation easements in accordance with the guidebook authorized under subsection (a)(3)(xv).

(xv) To exercise primary enforcement responsibility with respect to the following:

(A) Agricultural conservation easements within the county.

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<sup>18</sup> 3 P.S. § 908(d) and (g).

(B) Agricultural conservation easements acquired pursuant to the criteria set forth in subparagraph (i), including any portion of such an agricultural conservation easement extending into an adjoining county.

(3) The county may incur debt pursuant to the act of July 12, 1972 (P.L. 781, No. 185), known as the “Local Government Unit Debt Act,”<sup>19</sup> for the purchase of agricultural conservation easements.

(4) County programs for the purchase of agricultural conservation easements originally approved by the State board on or before December 31, 1994, shall be reviewed by the State board and approved or disapproved for recertification by December 31, 1996, and every seventh year thereafter. County programs for the purchase of agricultural conservation easements originally approved by the State board after December 31, 1994, shall be reviewed by the State board and approved or disapproved for recertification by December 31 of the seventh year after the date of original approval and every seventh year thereafter. On or before December 31, 1995, and the end of such other seven-year periods thereafter, the county board shall submit to the State board any proposed revisions to the county program for the purchase of agricultural conservation easements. County programs subject to State board review and recertification under this paragraph shall be approved or disapproved in accordance with the requirements of subsection (d), provided that the State board shall give priority to determining that county programs are in compliance with applicable provisions of law, regulations and guidelines. After December 31, 1996, and the end of such other seven-year periods, the State board shall not approve a county board’s recommendation to purchase until the county program has been approved for recertification, provided that the State board may postpone the deadline for recertification of any county’s program by up to 12 months and, during such period of postponement, may approve a county board’s recommendation to purchase.

(5) The governing body of the county may authorize the establishment of a program for the purchase of agricultural conservation easements on an installment or other deferred basis. The obligation of the county to make payment on an installment or other deferred basis shall not be subject to the requirements of section 602(b) or (c) of the “Local Government Unit Debt Act.”<sup>20</sup>

**(b.1) Local government unit participation.**—Any local government unit that has created an agricultural security area may participate along with an eligible county and the Commonwealth in the preservation of farmland through the purchase of agricultural conservation easements.

(1) The local government unit, in conjunction with a county board, may participate with the State board in the purchase of agricultural conservation easements.

(2) The local government unit shall recommend to the county board the purchase of agricultural conservation easements by the eligible county and the local government unit as joint ownership.

(3) The local government unit shall recommend to the county board the purchase of agricultural conservation easements by the local government unit and the Commonwealth as joint ownership.

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<sup>19</sup> 53 P.S. § 6780-1 *et seq.*

<sup>20</sup> 53 P.S. § 6780-252(b) or (c).

(4) The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:

(i) The agricultural conservation easement is located within an agricultural security area of at least 500 acres or the easement purchase is a joint purchase with either a county or both a county and the Commonwealth pursuant to the criteria set forth in subsection (b)(2)(i).

(ii) The deed of agricultural conservation easement is at least as restrictive as the deed of the agricultural conservation easement prescribed by the State board for agricultural conservation easements purchased by the Commonwealth.

(iii) The local government unit shall participate with the county board in complying with paragraph (5) for recording any agricultural conservation easement purchased by the local government unit.

(5) The county board shall be responsible to record agricultural conservation easements where a local government unit is a party to the purchase of the easement. The easement shall be recorded by the county board in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located. The county board shall submit to the State board a certified copy of agricultural conservation easements within 30 days after recording. The county board shall attach to all certified copies of the agricultural conservation easements submitted to the State board a description of the farmland subject to the agricultural conservation easements.

(6) The local government unit may incur debt pursuant to 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) for the purchase of agricultural conservation easements.

**(c) Restrictions and limitations.**—An agricultural conservation easement shall be subject to the following terms, conditions, restrictions and limitations.

(1) The term of an agricultural conservation easement shall be perpetual.

(2) Unless otherwise authorized in accordance with subsection (i), an agricultural conservation easement shall not be sold, conveyed, extinguished, leased, encumbered or restricted in whole or in part for a period of 25 years beginning on the date of purchase of the easement.

(3) Unless otherwise authorized in accordance with subsection (i), if the land subject to the agricultural conservation easement is no longer viable agricultural land, the Commonwealth, subject to the approval of the State board, and the county, subject to the approval of the county board, may sell, convey, extinguish, lease, encumber or restrict an agricultural conservation easement to the current owner of record of the farmland subject to the easement after the expiration of 25 years from the date of purchase of the easement for a purchase price equal to the value at the time of resale determined pursuant to subsection (f) at the time of conveyance. A conveyance by the Commonwealth pursuant to this subsection shall not be subject to the requirements of article XXIV-A of the act of April 9, 1929 (P.L. 177, No. 175), known as “The Administrative Code of 1929.”<sup>21</sup> The purchase price shall be payable to the Commonwealth and the county as their respective legal interests in the agricultural conservation easement appear, and a separate payment shall be made to the Commonwealth and the county accordingly at the time of settlement.

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<sup>21</sup> 71 P.S. § 651.1 *et seq.*

Any payment received by the Commonwealth pursuant to this provision shall be paid into the fund.

(4) Instruments and documents for the purchase, sale and conveyance of agricultural conservation easements shall be approved by the State board or the county board, as the case may be, prior to execution and delivery. Proper releases from mortgage holders and lienholders must be obtained and executed to insure that all agricultural conservation easements are purchased free and clear of all encumbrances.

(5) Whenever any public entity, authority or political subdivision exercises the power of eminent domain and condemns land subject to an agricultural conservation easement, the condemnor shall provide just compensation to the owner of the land in fee and to the owner of the easement as follows:

(i) The owner of the land in fee shall be paid the full value which would have been payable to the owner but for the existence of an agricultural conservation easement less the value of the agricultural conservation easement at the time of condemnation.

(ii) The owner of the easement shall be paid the value of the easement at the time of condemnation.

(iii) For easements owned jointly by the Commonwealth and an eligible county, if the eligible county commits its share of funds received under this paragraph toward the purchase of agricultural conservation easements, the condemnor shall provide the Commonwealth's share of funds to the eligible county for use in purchasing agricultural conservation easements in accordance with this act.

(iv) For easements owned by the Commonwealth, the condemnor shall provide the Commonwealth's share of funds received under this paragraph to the eligible county for use in purchasing agricultural conservation easements in accordance with this act.

(v) Funds received by an eligible county under this paragraph shall not be considered matching funds under subsection (h).

(vi) If an eligible county which receives funds under this paragraph fails to spend the Commonwealth's share of funds within two years of receipt of the funds, the eligible county shall pay the Commonwealth the Commonwealth's share of funds received under this paragraph plus 6% simple interest. These funds shall be deposited into the Agricultural Conservation Easement Purchase Fund.

(6) An agricultural conservation easement shall not prevent:

(i) The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals.

(ii) The granting of rights-of-way by the owner of the subject land in and through the land for the installation of, transportation of, or use of water, sewage,

electric, telephone, coal by underground mining methods, gas, oil or oil products lines.

(iii) Construction and use of structures on the subject land necessary for agricultural production.

(iv) Construction and use of structures on the subject land for the landowner's principal residence or for the purpose of providing necessary housing for seasonal or full-time employees: Provided, That only one such structure may be constructed on no more than two acres of the subject land during the term of the agricultural conservation easement.

(v) Customary part-time or off-season minor or rural enterprises and activities which are provided for in the county Agricultural Conservation Easement Purchase Program approved by the State board under subsection (d).

(7) Land subject to an agricultural conservation easement shall not be subdivided for any purpose which may harm the economic viability of the farmland for agricultural production. Land may be subdivided prior to the granting of an agricultural conservation easement, provided that subdividing will not harm the economic viability for agricultural production of the land subject to the easement.

(8) Nothing in this act shall prohibit a member of the State board or county board or his or her family from selling a conservation easement under this program, provided that all decisions made regarding easement purchases be subject to the provisions of section 3(j) of the act of October 4, 1978 (P.L. 883, No. 170), referred to as the Public Official and Employee Ethics Law.<sup>22</sup>

**(d) Program approval.—**

(1) The standards, criteria and requirements established by the State board for State board approval of county programs for purchasing agricultural conservation easements shall include, but not be limited to, the extent to which the county programs consider and address the following:

(i) The quality of the farmlands subject to the proposed easements, including soil classification and soil productivity ratings. Farmland considered should include soils which do not have the highest soil classifications and soil productivity ratings but which are conducive to producing crops unique to the area.

(ii) The likelihood that the farmlands would be converted to nonagricultural use unless subject to an agricultural conservation easement. Areas in the county devoted primarily to agricultural use where development is occurring or is likely to occur in the next 20 years should be identified. For purposes of considering the likelihood of conversion, the existence of a zoning classification of the land shall not be relevant, but the market for nonfarm use or development of farmlands shall be relevant.

(ii.1) Proximity of the farmlands subject to proposed easements to other agricultural parcels in the county which are subject to agricultural conservation easements.

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<sup>22</sup> 65 P.S. § 403(j).

(iii) The stewardship of the land and use of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control and nutrient management.

(iv) Fair, equitable, objective and nondiscriminatory procedures for determining purchase priorities.

(2) The State board shall act on a county's program for purchasing agricultural conservation easements within 60 days of its receipt, and shall notify immediately the county in writing of approval or disapproval of its program in accordance with the criteria set forth in this subsection. Failure of the State board to act on the submission of a county program under this provision within 60 days of its receipt shall be deemed to constitute approval of the county program by the State board.

**(e) Easement purchase.—**

(1) The State board may reject the recommendation made by a county for purchase of an agricultural conservation easement whenever:

(i) The recommendation does not comply with a county program certified and approved by the State board for purchasing agricultural conservation easements.

(ii) Clear title cannot be conveyed.

(iii) The farmland which would be subject to the agricultural conservation easement is either not located within a duly established agricultural security area of 500 or more acres established or recognized under this act or not in compliance with the criteria set forth in subsection (b)(2)(i).

(iv) The allocation of a county established pursuant to subsection (h) is exhausted or is insufficient to pay the purchase price.

(v) Compensation is not provided to owners of surface-mineable coal disturbed or affected by the creation of such easement.

(2) The State board shall act to approve, disapprove or table the recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt, unless the following conditions delay such action:

(i) The occurrence of a catastrophic event which precludes the convening of the State board. Any natural disaster, including, but not limited to, fire, flood, excessive wind, snow or earthquake shall constitute a catastrophic event.

(ii) The issue of a subdivision causes further questions by the State board.

(iii) Legal actions or court decisions are pending which would affect the recommendation in question.

(iv) The State board passes a resolution directing that an independent hearing examiner conduct an administrative hearing on any issue relating to the recommendation submitted by the county. In such an occurrence, the 60-day period shall be extended to 120 days.

The 60-day period shall be extended until all issues set forth in this paragraph are resolved to the satisfaction of the State board, whereby the State board shall act at the next scheduled meeting on the recommendation of the county board. Decisions delayed due to catastrophic events shall be determined in as reasonable amount of time as possible

(3) If the State board disapproves the recommendation by a county for purchase of an agricultural conservation easement, the county shall be given written notice of the

disapproval within ten days of the decision of the State board. The written notice shall state the reason for the State board's disapproval of the recommendation.

(4) A decision of the State board issued under the authority of this subsection shall be an adjudication subject to the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

(5) Failure of the State board to act on a recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt shall be deemed to constitute approval by the State board, unless one or more of the conditions under paragraph (2) exist.

**(f) Valuation.**—The State board or the county board, as the case may be, shall select and retain an independent State-certified general real estate appraiser to determine market value and farmland value. If the seller disagrees with the appraisal made by the State or county board's appraiser, the seller shall have the right to select and retain a separate independent State-certified general real estate appraiser within 30 days of receipt of the appraisal of the State or county board's appraiser to determine market value and farmland value. The State board or the county board shall establish the agricultural value and the nonagricultural value of the property subject to the agricultural conservation easement. The State board may provide for a periodic review by a State-certified general real estate appraiser of appraisals submitted by counties in order to assure that the appraisals were performed in accordance with the standards of appraisal practice.

(1) The agricultural value shall equal the sum of:

(i) the farmland value determined by the seller's appraiser; and

(ii) one-half of the difference between the farmland value determined by the State or county board's appraiser and the farmland value determined by the seller's appraiser if the farmland value determined by the State or county board's appraiser exceeds the farmland value determined by the seller's appraiser.

(2) The nonagricultural value shall equal the sum of:

(i) the market value determined by the State or county board's appraiser; and

(ii) one-half of the difference between the market value determined by the seller's appraiser and the market value determined by the State or county board's appraiser, if the market value determined by the seller's appraiser exceeds the market value determined by the State or county board's appraiser.

(3) The entire acreage of the farmland shall be included in the determination of the value of an agricultural conservation easement, less the value of any acreage which was subdivided prior to the granting of such easement. The appraiser shall take into account the potential increase in the value of the subdivided acreage because of the placement of the easement on the remaining farmland.

**(g) Purchase price.**—The price paid for purchase of an agricultural conservation easement in perpetuity shall not exceed the difference between the nonagricultural value and the agricultural value determined pursuant to subsection (f) at the time of purchase, unless the difference is less than the State or county boards' original appraised value in which case the State or county boards' original easement value may be offered. The purchase price may be paid in a lump sum, in installments over a period of years, or in any other lawful manner of payment. If payment is made in installments or another

deferred method, the person selling the easement may receive, in addition to the selling price, interest in an amount or at a rate set forth in the agreement of purchase, and final payment of all State money shall be made within, and no later than, five years from the date the agricultural conservation easement purchase agreement was fully executed. The county may provide for payments on an installment or other deferred basis and for interest payments by investing its allocation of State money for purchases approved by the State board under subsection (h)(11) in securities deposited into an irrevocable escrow account or in another manner provided by law.

**(h) Allocation of State moneys.**—By March 1 of each year, the State board shall make an annual allocation among counties, except counties of the first class, for the purchase of agricultural conservation easements.

(1) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph unless the context clearly indicates otherwise:

(i) “Adjusted weighted transfer tax revenues.” An amount equal to the weighted transfer tax revenues of a county divided by the sum of the weighted transfer tax revenues of all counties except counties of the first class.

(ii) “Annual agricultural production.” The total dollar volume of sales of livestock, crops and agricultural products according to the most recent Annual Crop and Livestock Summary published by the Pennsylvania Agricultural Statistics Service.

(iii) “Annual easement purchase threshold.” An amount annually determined by the State board which equals at least \$10,000,000.

(iv) “Average realty transfer tax revenues.” The total annual realty transfer tax revenues collected in all counties, except counties of the first class, divided by 66.

(v) “Realty transfer tax revenues.” The tax imposed and collected under section 1102-C of the act of March 4, 1971 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971.”<sup>23</sup>

(vi) “Weighted transfer tax revenues.” An amount equal to the total annual realty transfer tax revenues collected in a county divided by the sum of the total annual realty tax revenues collected in all counties except counties of the first class which does not exceed three times the average realty transfer tax revenues.

(2) An annual allocation shall be made to each county, except counties of the first class, for the purchase of agricultural conservation easements by the Commonwealth at the beginning of the county fiscal year which equals 50% of the annual easement purchase threshold multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.

(3) If the aggregate annual allocation under this paragraph to all counties, except counties of the first class, does not exceed 50% of the annual easement purchase threshold, an additional annual allocation from 50% of the annual easement purchase threshold shall be made to a county, except a county of the first class, at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county. The additional annual allocation under this paragraph shall equal the sum of:

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<sup>23</sup> 72 P.S. § 8102-C.

(i) The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (2) multiplied by four.

(ii) The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (2) multiplied by four, if the county has an annual agricultural production which equals at least 2% of the total annual agricultural production of the Commonwealth for the same year.

(4) If the aggregate annual allocation under paragraph (3) to all counties, except counties of the first class, would exceed 50% of the annual easement purchase threshold, paragraph (3) shall not apply, and an additional annual allocation shall be made under this paragraph at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county, except a county of the first class. The additional annual allocation to a county under this paragraph shall equal 50% of the annual easement purchase threshold multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all counties, except counties of the first class, for the purchase of agricultural conservation easements and in all cases shall not exceed the average annual allocation under paragraph (2) multiplied by four.

(5) An additional annual allocation shall be made to a county, except a county of the first class, from the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, as follows:

(i) An additional annual allocation shall be made for the joint purchase of agricultural conservation easements by the Commonwealth and a county which equals six-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all counties, except counties of the first class, for the purchase of agricultural conservation easements.

(ii) An additional annual allocation shall be made for the purchase of agricultural conservation easements by the Commonwealth which equals four-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.

(6) The allocation of a county shall be adjusted for purchases of agricultural conservation easements made with moneys from the county's allocation, for all costs, except administrative costs, incurred by the Commonwealth or a county incident to the purchase of agricultural conservation easements and for the costs of reimbursing nonprofit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or county. No purchase of an agricultural conservation easement shall be made with State moneys

allocated to a county unless the amount of the purchase price is equal to or less than the adjusted allocation or the county pays the portion of the purchase price which represents the difference between the purchase price and the adjusted allocation.

(7), (8) Deleted.

(8.1) Beginning with the annual allocation under paragraphs (2), (3), (4) and (5) made by March 1, 1995, and for each annual allocation thereafter, money allocated to counties which are not eligible counties shall be immediately reallocated to eligible counties. Fifty percent of the money available for reallocation under this paragraph shall be reallocated to eligible counties on the basis of the annual agricultural production in each eligible county as a percentage of the total annual agricultural production in all those eligible counties. Twenty-five percent of the money available for reallocation under this paragraph shall be reallocated to eligible counties on the basis of the realty transfer tax revenues for the last fiscal year in each of the eligible counties as a percentage of the total realty transfer tax revenues for the last fiscal year in all those eligible counties. Twenty-five percent of the money available for reallocation under this paragraph shall be reallocated to eligible counties on the basis of the local moneys appropriated by eligible counties for the purchase of agricultural conservation easements for the current county fiscal year in each of the eligible counties as a percentage of the total of local moneys appropriated for the purchase of agricultural conservation easements for the current county fiscal year in all those eligible counties.

(8.2) The total annual allocation made to an eligible county by March 1 of the county's fiscal year for the purchase of agricultural conservation easements and the total annual reallocation made to an eligible county under paragraph (8.1) may be spent over a period of two consecutive county fiscal years. Money allocated or reallocated to a county under this subsection which has not been expended or encumbered by such county at the conclusion of the second county fiscal year shall be restored to the fund. Such money shall not be restored to the fund if by December 31 of the second fiscal year the department has received an agreement executed by the landowner and the county to purchase a specific agricultural conservation easement as part of the county board's recommendation for purchase.

(9) The allocation made to a county under this subsection shall be used for the purchase of agricultural conservation easements in perpetuity.

(10)

(i) Notwithstanding any other provision of this subsection or any provision of regulations promulgated pursuant to this act, the department shall not reallocate funds which were allocated prior to January 1, 1994, if, by December 31, 1993, the department has received an agreement signed by the landowner and the county board to purchase a specific agricultural conservation easement as part of the county board's recommendation for purchase.

(ii) Nothing in this paragraph shall affect any reallocation made prior to the effective date of this paragraph.

(11) Whenever the State board approves the recommendation made by a county for purchase of an agricultural conservation easement on an installment or other deferred basis and final payment is to be made more than five years from the date the agricultural conservation easement purchase agreement is fully executed, the moneys allocated to the county for the purchase of such easement, exclusive of interest, shall be transferred to the

county and may be invested by the county in the manner provided by law. Transfer of the moneys to the county shall relieve the Commonwealth of any obligation to pay or assure the payment of the purchase price and interest.

**(i) Subdivision of land after easement purchase.—**

(1) Each county program shall specify the conditions under which the subdivision of land subject to an agricultural conservation easement may be permitted. In no case, however, shall a county program permit a subdivision which will:

- (i) harm the economic viability of the farmland for agricultural production; or
- (ii) convert land which has been devoted primarily to agricultural use to another primary use, except that a county program may permit one subdivision for the purpose of the construction of a principal residence for the landowner or an immediate family member.

(2) The county board may agree to permit a parcel of land subject to an agricultural conservation easement to be subdivided after the granting of such easement as follows:

(i) The landowner of record may submit an application, in such form and manner as the county board may prescribe, to the county board requesting that a parcel of the land subject to an easement be subdivided. Upon receipt of the application, the county board shall cause to be forwarded written notification thereof to the county zoning office, county planning office and county farmland preservation office, herein referred to as the reviewing agencies. Each reviewing agency shall have 60 days from receipt of such notification to review, comment and make recommendations on the proposed application to the county board.

(ii) After reviewing the application and the comments and recommendations submitted by the reviewing agencies, the county board shall approve or reject the application to subdivide within 120 days after the date of its filing unless the time is extended by mutual agreement of the landowner and reviewing agencies.

(iii) If the application to subdivide land is approved by the county board, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be forwarded to the State board for review and approval or disapproval. When reviewing an application to subdivide land subject to an agricultural conservation easement, the State board shall consider only whether the application complies with the conditions under which subdivisions are permitted by the approved county program. The State board shall notify the county board of its decision regarding the application.

(iv) If the application to subdivide is rejected by the county board, the application shall be returned to the landowner with a written statement of the reasons for such rejection. Within 30 days after the receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies) and Ch. 7 Subch. B (relating to judicial review of local agency action).

**(j) Change of ownership.—**

(1) Whenever interest in land subject to an agricultural conservation easement is conveyed or transferred to another person, the deed conveying or transferring such land

shall recite in verbatim the language of the easement as set forth in the deed executed in connection with the purchase of the agricultural conservation easement.

(2) The person conveying or transferring land subject to an agricultural conservation easement shall within 30 days of change in ownership notify the county board and the department of the name and address of the person to whom the subject land was conveyed or transferred and the price per acre or portion thereof received by the landowner from such person.

(3) Notwithstanding any other provisions of law to the contrary, the restrictions set forth in a deed executed in connection with the purchase of an agricultural conservation easement shall be binding on any person to whom subsequent ownership of the land subject to the easement is conveyed or transferred.

**(k) Provisions for agricultural conservation easements.**—Any land subject to an agricultural conservation easement under this act shall continue to be subject to the provisions of sections 11, 12 and 13<sup>24</sup> regardless of any future modification or termination of the agricultural security area under section 9.<sup>25</sup>

#### **§ 914.4. Legislative report**

The State board shall submit to the General Assembly an annual report no later than May 1. The report shall include, but not be limited to, the following information:

(1) The location of agricultural security areas and agricultural conservation easements in the Commonwealth.

(2) The number of acres throughout the Commonwealth which are located within agricultural security areas.

(3) The number of acres throughout the Commonwealth which are subject to agricultural conservation easements.

(4) The number of agricultural conservation easements in the Commonwealth.

(5) The number of acres included within each agricultural conservation easement throughout the Commonwealth.

(6) The number and value of agricultural conservation easements purchased by the Commonwealth, including the number and value of purchases made during the preceding calendar and the preceding fiscal year of the Commonwealth.

(7) The number and value of agricultural conservation easements purchased jointly by the Commonwealth and the counties, including the number and value of purchases made during the preceding calendar and the preceding fiscal year of the Commonwealth.

(8) The identity of counties participating in the State program for purchasing agricultural conservation easements.

(9) The dollar value of the annual appropriation made by counties for the purchase of agricultural conservation easements.

(10) The quality of the farmlands subject to agricultural conservation easement, including the soil classifications and productivity of the farmlands.

(11) The nature scope and extent of development activity within the area where agricultural conservation easements have been purchased.

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<sup>24</sup> 3 P.S. §§ 911, 912 and 913.

<sup>25</sup> 3 P.S. § 909.

(12) The nature and extent of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control and nutrient management practices, which are practiced on farmlands subject to agricultural conservation easements.

(13) The total number of recommendations filed by counties for purchase of agricultural conservation easements and the number approved and disapproved, and the reasons for disapproval.

### **§ 914.5 Supplemental Agricultural Conservation Easement Purchase Program**

**(a) Establishment.**—There is established the Supplemental Agricultural Conservation Easement Purchase Program. Funds appropriated for the program shall be allocated by the State board in accordance with the following:

(1) Except as provided in paragraphs (2) and (3), funds may be allocated to eligible counties in accordance with section 14.1(h)(8.1) and (8.2)<sup>7</sup> for any purpose authorized under this act.

(2) Up to \$500,000 may be allocated to provide technical assistance to eligible counties or groups of eligible counties regarding long-term installment purchases of agricultural conservation easements in this Commonwealth. An eligible county must file an application with the State board to receive reimbursement or payment under this paragraph. Technical assistance may include department contracts with individuals with legal or financial expertise to assist eligible counties. Funds may be used for administrative expenses of the department incurred under this paragraph.

(3) Up to \$500,000 may be allocated to reimburse land trusts for expenses incurred to acquire agricultural conservation easements in the Commonwealth. Eligible expenses include the cost of appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs. Reimbursement shall be limited to \$5,000 per easement. Funds may be used for administrative expenses of the department incurred under this paragraph. In order to be eligible under this paragraph, a land trust must:

(i) be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S. C. § 501 (c)(3)) and include the acquisition of agricultural or other conservation easement in its state purpose;

(ii) register with the State board;

(iii) coordinate with the farmland preservation activities of the county if the farmland preservation activity occurs in an eligible county or coordinate with the activities of the State board if the activity does not occur in an eligible county; and

(iv) submit an application to the State board with a statement of costs incidental to the acquisition, the deed of easement and any other documentation required by the State board, within 60 days of closing on the easement.

**(b) Account.**—

(1) An account is established in the fund, to be known as the Supplemental Agricultural Conservation Easement Purchase Account. All funds appropriated to the

Supplemental Agricultural Conservation Easement Purchase Program shall be deposited in the account for allocation under this section.

(2) Funds allocated under subsection (a)(1) which are unexpended or unencumbered on June 30, 2001, shall be restored to the account. If no funds are appropriate to the program by June 20, 2001, the restored funds shall be transferred to the fund.

(3) Local appropriation.—Within 60 days of the effective date of any additional appropriations to the program, eligible counties shall be authorized to appropriate additional local money for the purchase of agricultural conservation easements for the current county fiscal year. This additional local money shall be included when determining each eligible county's share of money allocated under this section for supplemental agricultural easement purchase programs under methodologies in section 14.1(h)(8.1) and (8.2).

### **§ 915. Rules and regulations**

The Secretary of the Department of Agriculture shall promulgate rules and regulations necessary to promote the efficient, uniform and Statewide administration of the act. From January 1, 1995, through December 31, 1997, the Secretary of Agriculture shall have the power and authority to promulgate, adopt and use guidelines to implement the provisions of this act. The guidelines shall be published in the Pennsylvania Bulletin but shall not be subject to review pursuant to section 205 of the act of July 31, 1968(P.L. 769, No. 240)<sup>26</sup>, referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 14, 1980 (P.L. 950, No. 164), known as the “Commonwealth Attorneys Act,”<sup>27</sup> or the act of June 25, 1982 (P.L. 633, No. 181) known as the “Regulatory Review Act.”<sup>28</sup> All such guidelines shall expire no later than December 31, 1997, and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

## **End of Document**

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<sup>26</sup> 45 P.S. § 1205.

<sup>27</sup> 71 P.S. §§ 732-204(b), 732-301(10).

<sup>28</sup> 71 P.S. § 745.1 *et seq.*