

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1394 Session of 2009

INTRODUCED BY HOUGHTON, HANNA, GEORGE, GERGELY, CALTAGIRONE, CARROLL, DALEY, GODSHALL, KESSLER, KORTZ, MILLARD, SIPTROTH, SOLOBAY, WHITE, ROAE, BRADFORD, McILVAINE SMITH, YOUNGBLOOD, GIBBONS, MATZIE AND MENSCH, APRIL 30, 2009

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 17, 2009

AN ACT

1 Amending the act of December 19, 1974 (P.L.973, No.319),  
 2 entitled "An act prescribing the procedure under which an  
 3 owner may have land devoted to agricultural use, agricultural  
 4 reserve use, or forest reserve use, valued for tax purposes  
 5 at the value it has for such uses, and providing for  
 6 reassessment and certain interest payments when such land is  
 7 applied to other uses and making editorial changes," further  
 8 providing for definitions, for responsibilities of the county  
 9 assessor in general, for split-off, separation or transfer of  
 10 land and for roll-back taxes and special circumstances; and  
 11 providing for removal of land from preferential assessment.

12 The General Assembly of the Commonwealth of Pennsylvania

13 hereby enacts as follows:

14 Section 1. The definitions of "agricultural reserve,"  
 15 "agricultural use" and "forest reserve" in section 2 of the act  
 16 of December 19, 1974 (P.L.973, No.319), known as the  
 17 Pennsylvania Farmland and Forest Land Assessment Act of 1974,  
 18 amended December 21, 1998 (P.L.1225, No.156) and December 8,  
 19 2004 (P.L. 1785, No.235), are amended and the section is amended  
 20 by adding definitions to read:

21 Section 2. Definitions.--As used in this act, the following

1 words and phrases shall have the meanings ascribed to them in  
 2 this section unless the context obviously otherwise requires:

3 \* \* \*

4 "Agricultural reserve." Noncommercial open space lands used  
 5 for outdoor recreation or the enjoyment of scenic or natural  
 6 beauty and open to the public for such use, without charge or  
 7 fee, on a nondiscriminatory basis. The term includes any land

8 devoted to the development and operation of an alternative  
 9 energy system, if a majority of the energy ANNUALLY generated is ←  
 10 utilized on the tract in the production of an agricultural  
 11 commodity or in activities performed on the farmstead land.

12 "Agricultural use." Land which is used for the purpose of  
 13 producing an agricultural commodity or is devoted to and meets  
 14 the requirements and qualifications for payments or other  
 15 compensation pursuant to a soil conservation program under an  
 16 agreement with an agency of the Federal Government. The term  
 17 includes;

18 (1) any farmstead land on the tract[. The term includes];

19 (2) a woodlot [and];

20 (3) any land which is rented to another person and used for  
 21 the purpose of producing an agricultural commodity; and

22 (4) any land devoted to the development and operation of an  
 23 alternative energy system, if a majority of the energy ANNUALLY ←  
 24 generated is utilized on the tract in the production of an  
 25 agricultural commodity or in activities performed on the  
 26 farmstead land.

27 \* \* \*

28 "Alternative energy." Electricity, heat or other usable form  
 29 of energy generated from a Tier I energy source.

30 "Alternative energy system." A facility or energy system.

1 that utilizes a Tier I energy source to generate alternative  
2 energy. The term includes a facility or system that generates  
3 alternative energy for utilization onsite or for delivery of the  
4 energy generated to an energy distribution company or to an  
5 energy transmission system operated by a regional transmission  
6 organization.

7 \* \* \*

8 "Forest reserve." Land, ten acres or more, stocked by forest  
9 trees of any size and capable of producing timber or other wood  
10 products. The term includes any land devoted to the development  
11 and operation of an alternative energy system, if a majority of  
12 the energy ANNUALLY generated is utilized on the tract in the ←  
13 production of an agricultural commodity or in activities  
14 performed on the farmstead land.

15 \* \* \*

16 "Tier I energy source." A Tier I alternative energy source.  
17 as defined in section 2 of the act of November 30, 2004  
18 (P.L.1672, No.213), known as the "Alternative Energy Portfolio  
19 Standards Act."

20 \* \* \*

21 Section 2. Section 5 of the act is amended by adding a  
22 subsection to read:  
23 Section 5. Responsibilities of the County Assessor in  
24 General.--\* \* \*  
25 (b.1) Portions of land devoted to the development and  
26 operation of an alternative energy system meeting the definition  
27 of agricultural use, agricultural reserve or forest reserve  
28 shall retain the same land use category for preferential  
29 assessment as was approved for the land before the devotion took  
30 place.

1 Section 3. Sections 6 and 8(b) of the act, amended December  
2 21, 1998 (P.L.1225, No.156), are amended to read:

3 Section 6. Split-off, Separation or Transfer; Other Use.--

4 (a.1) (1) The split-off of a part of land which is subject to  
5 preferential assessment under this act shall subject the land so  
6 split off and the entire tract from which the land was split off  
7 to roll-back taxes as set forth in section 5.1. The landowner  
8 changing the use of the land to one inconsistent with this act  
9 shall be liable for payment of roll-back taxes. The landowner of  
10 land which continues to be eligible for preferential assessment  
11 shall not be liable for any roll-back taxes triggered as a  
12 result of a change to an ineligible use by the owner of the  
13 split-off tract. Roll-back taxes under section 5.1 shall not be  
14 due if one of the following provisions applies:

15 (i) The tract split off does not exceed two acres annually,  
16 except that a maximum of the minimum residential lot size  
17 requirement annually may be split off if the property is  
18 situated in a local government unit which requires a minimum  
19 residential lot size of two to three acres; the tract split off  
20 is used only for agricultural use, agricultural reserve or  
21 forest reserve or for the construction of a residential dwelling  
22 to be occupied by the person to whom the land is conveyed; and  
23 the total tract or tracts so split off do not exceed the lesser  
24 of ten acres or ten percent (10%) of the entire tract subject to  
25 preferential assessment.

26 (ii) The split-off occurs through a condemnation.

27 (2) Each tract which has been split off under paragraph (1)  
28 (i) shall be subject to roll-back taxes for such a period of  
29 time as provided in section 5.1. The landowner changing the use  
30 of the land shall be liable for payment of roll-back taxes.

1 (3) The split-off of a tract of land which meets the  
2 provisions of paragraph (1) shall not invalidate the  
3 preferential assessment on any land retained by the landowner  
4 which continues to meet the provisions of section 3.  
5 (4) Payment of roll-back taxes by the liable landowner shall  
6 not invalidate the preferential assessment on any land which  
7 continues to meet the provisions of section 3.  
8 (5) Any person may bring an action in equity to enjoin use  
9 of the land inconsistent with the use provided in this  
10 subsection.  
11 (6) Land which has been split off shall be deemed to be used  
12 for residential use, agricultural use, agricultural reserve or  
13 forest reserve unless it is demonstrated that the owner of the  
14 split-off parcel is actively using the tract in a manner which  
15 is inconsistent with residential use, agricultural use,  
16 agricultural reserve or forest reserve.  
17 (a.2) The owner of land subject to preferential assessment  
18 may separate land. If a separation occurs, all tracts formed by  
19 the separation shall continue to receive preferential assessment  
20 unless, within seven years of the separation, there is a  
21 subsequent change of use to one inconsistent with the provisions  
22 of section 3. Such subsequent change in use shall subject the  
23 entire tract so separated to roll-back taxes as set forth in  
24 section 5.1. The landowner changing the use of the land to one  
25 inconsistent with the provisions of section 3 shall be liable  
26 for payment of roll-back taxes. After seven years from the date  
27 of the separation, only that portion of land which has had its  
28 use changed to one which is inconsistent with the provisions of  
29 section 3 shall be subject to roll-back taxes as set forth in  
30 section 5.1. Payment of roll-back taxes shall not invalidate the

1 preferential assessment on any land which continues to meet the  
2 provisions of section 3.

3 (a.3) If ownership of land subject to a single application  
4 for preferential assessment is transferred to another landowner,  
5 the land shall continue to receive preferential assessment, and  
6 no roll-back taxes shall be due unless there is a subsequent  
7 change of use to one inconsistent with the provisions of section  
8 3. The landowner changing the use of the land to one  
9 inconsistent with the provisions of section 3 shall be liable  
10 for payment of roll-back taxes. Payment of roll-back taxes shall  
11 not invalidate the preferential assessment on any land which  
12 continues to meet the provisions of section 3.

13 (b.1) The owner of property subject to preferential  
14 assessment may lease land covered by the preferential assessment  
15 to be used for wireless or cellular telecommunication when the  
16 following conditions are satisfied:

17 (1) The tract of land so leased does not exceed one-half of  
18 an acre.

19 (2) The tract of land does not have more than one  
20 communication tower.

21 (3) The tract of land is accessible.

22 (4) The tract of land is not sold or subdivided. A lease of  
23 land shall not be considered a subdivision under this paragraph.

24 (b.2) Use of land under this section for wireless services  
25 other than wireless telecommunications may only qualify if such  
26 wireless services share a tower with a wireless  
27 telecommunications provider as provided for in subsection (b.1).  
28 Roll-back taxes shall be imposed upon the tract of land leased  
29 by the landowner for wireless or cellular telecommunications  
30 purposes and the fair market value of that tract of land shall

1 be adjusted accordingly. The lease of such a tract of land shall  
2 not invalidate the preferential assessment of the land which is  
3 not so leased, and such land shall continue to be eligible for  
4 preferential assessment if it continues to meet the requirements  
5 of section 3.

6 (b.3) The wireless or cellular communications provider shall  
7 be solely responsible for obtaining required permits in  
8 connection with any construction on a tract of land which it  
9 leases pursuant to the provisions of this section for  
10 telecommunications purposes. No permit requested pursuant to  
11 this section shall be denied by a municipality for any reason  
12 other than failure to strictly comply with permit application  
13 procedures.

14 (c.1) (1) Land subject to preferential assessment may be  
15 leased or otherwise devoted to the exploration for and removal  
16 of oil and gas, including the extraction of coal bed methane,  
17 and the development of appurtenant facilities, including, but  
18 not limited to, new roads and bridges, pipelines and other  
19 buildings or structures related to those activities.

20 (2) Portions of land subject to preferential assessment may  
21 be used for exploration for or removal of oil and gas, including  
22 the extraction of coal bed methane, and the development of  
23 appurtenant facilities, including, but not limited to, new roads  
24 and bridges, pipelines and other buildings or structures related  
25 to those activities.

26 (c.2) Roll-back taxes shall be imposed upon those portions  
27 of the land actually devoted to the activities set forth in  
28 subsection (c.1)(2), excluding land devoted solely to subsurface  
29 transmission or gathering lines which shall not be subject to  
30 roll-back tax. The portion of land subject to roll-back tax

1 shall be the restored well site and any portion of land that  
2 does not meet the requirements of section 3, as measured upon  
3 the filing of a well site restoration report with the Department  
4 of Environmental Protection as required by 25 Pa. Code 78.65  
5 (relating to site restoration) or its subsequent version. Within  
6 ten days of its receipt APPROVAL, a copy of this report shall be ←  
7 furnished by the Department of Environmental Protection to the  
8 county board for assessment appeals. The fair market value of  
9 the restored well site and any land that does not meet the  
10 requirements of section 3 shall be adjusted to begin on the date  
11 of approval of a permit issued in accordance with the provisions  
12 of the act of December 19, 1984 (P.L.1140, No.223), known as the  
13 "Oil and Gas Act," and payable upon the filing of a well site  
14 restoration report. The use of a portion of land under  
15 subsection (c.1)(2) shall not invalidate the preferential  
16 assessment of the land which is not so used, and the land shall  
17 continue to receive preferential assessment if it continues to  
18 meet the requirements of section 3.

19 (c.3) Notwithstanding subsection (c.2), no roll-back taxes  
20 shall be imposed upon a landowner for activities related to the  
21 exploration for and removal of oil and gas, including the  
22 extraction of coal bed methane, conducted exclusively by parties ←  
23 other than the landowner who hold rights to conduct such  
24 activities pursuant to an instrument, conveyance or other  
25 vesting of such rights, but not by virtue of a lease agreement,  
26 occurring before the land received a preferential assessment  
27 under this act. A county that has previously assessed roll back  
28 taxes and adjusted fair market value on lands covered by  
29 preferential assessment prior to the enactment of this  
30 subsection shall comply with this subsection beginning on the

~~1 effective date of this subsection, and shall not be required to~~  
~~2 implement the provisions of this subsection retroactively.~~  
~~3 Counties that have not assessed roll back taxes and adjusted~~  
~~4 fair market value for tracts of land utilized for oil and gas~~  
~~5 drilling and appurtenant facilities prior to enactment of this~~  
~~6 subsection may not implement the provisions of this subsection~~  
~~7 retroactively.~~

8 OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION IF ALL OF THE ←  
9 FOLLOWING CONDITIONS ARE MET:

10 (1) THE ACTIVITIES ARE CONDUCTED EXCLUSIVELY BY PARTIES  
11 OTHER THAN THE LANDOWNER.

12 (2) THE ACTIVITIES ARE CONDUCTED PURSUANT TO AN INSTRUMENT,  
13 CONVEYANCE OR OTHER VESTING OF SUCH RIGHTS OCCURRING BEFORE THE  
14 LAND RECEIVED A PREFERENTIAL ASSESSMENT UNDER THIS ACT AND  
15 BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION.

16 (3) THE ACTIVITIES ARE NOT CONDUCTED PURSUANT TO A LEASE.

17 (c.4) The owner of property subject to preferential  
18 assessment may lease or devote land covered by the preferential  
19 assessment to be used for a wind power generation system.

20 (c.5) Roll-back taxes shall be imposed upon those portions  
21 of the land actually devoted by the landowner for wind power  
22 generation system purposes and the fair market value of those  
23 portions of the land shall be adjusted accordingly. The wind  
24 power generation system shall include the foundation of the wind  
25 turbine and the area of the surface covered by appurtenant  
26 structures, including, but not limited to, new roads and  
27 bridges, transmission lines, substations and other buildings or  
28 structures related to the wind power generation system. Roll-  
29 back taxes on those portions of the land shall not invalidate  
30 the preferential assessment of any other land covered by the

1 preferential assessment and such land shall continue to be  
2 eligible for preferential assessment if it continues to meet the  
3 requirements of section 3.

4 (c.6) The owner of property subject to preferential  
5 assessment may lease or devote land covered by the preferential  
6 assessment to be used for small noncoal surface mining, as  
7 provided for under the act of December 19, 1984 (P.L.1093,  
8 No.219), known as the Noncoal Surface Mining Conservation and  
9 Reclamation Act. AT ANY ONE TIME, A LANDOWNER MAY ONLY HAVE ONE ←  
10 ACTIVE SMALL NONCOAL SURFACE MINING PERMIT AS REQUIRED UNDER 25  
11 PA. CODE § 77.108 (RELATING TO PERMIT FOR SMALL NONCOAL  
12 OPERATIONS) PER APPLICATION FOR PREFERENTIAL ASSESSMENT.

13 (c.7) Roll-back taxes shall be imposed upon those portions  
14 of land leased or devoted by the landowner for small noncoal  
15 surface mining, and the fair market value of those portions of  
16 the land shall be adjusted accordingly. Roll-back taxes on those  
17 portions of the land shall not invalidate the preferential  
18 assessment of the land which is not so leased or devoted, and  
19 the land shall continue to be eligible for preferential  
20 assessment if it continues to meet the requirements of section  
21 3.

22 (d) Upon the death of a landowner receiving preferential  
23 assessment under this act, if land subject to preferential  
24 assessment is divided among the beneficiaries designated as  
25 class A for inheritance tax purposes and, as a result of such  
26 division, one or more tracts no longer meet the provisions of  
27 section 3, no roll-back tax shall be due on any of the land  
28 which previously qualified for preferential assessment. A  
29 subsequent change in the use of one such beneficiary's portion  
30 of the divided land shall not subject any other beneficiary's

1 portion of the divided land to roll-back taxes. Roll-back taxes  
2 shall be due only in accordance with the provisions of section  
3 5.1 on the tract held by the beneficiary who changes the use of  
4 any portion of his or her inheritance.

5 (e) Any change in use of land subject to preferential  
6 assessment shall be in compliance with the zoning ordinances of  
7 the local municipality, if in effect.

8 Section 8. Roll-Back Taxes; Special Circumstances.--

9 (b) Unpaid roll-back taxes shall be a lien upon the property  
10 collectible in the manner provided by law for the collection of  
11 delinquent taxes. Roll-back taxes shall become due on the date  
12 of change of use, or when a well site restoration report is  
13 filed under section 6(c.2), or any other termination of  
14 preferential assessment and shall be paid by the owner of the  
15 land at the time of change in use, or any other termination of  
16 preferential assessment, to the county treasurer or to the tax  
17 claim bureau, as the case may be, whose responsibility it shall  
18 be to make proper distribution of the taxes to the taxing bodies  
19 wherein the property is located. Nothing in this section shall  
20 be construed to require the taxing body of a taxing district in  
21 which land enrolled in preferential use is situated to accept  
22 the roll-back taxes due and payable to that taxing district if  
23 the use of the land is changed for the purpose of granting or  
24 donating such land to:

- 25 (1) a school district;
- 26 (2) a municipality;
- 27 (3) a county;
- 28 (4) a volunteer fire company;
- 29 (5) a volunteer ambulance service;
- 30 (6) a not-for-profit corporation, tax exempt under section

1 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26  
2 U.S.C. § 501(c)(3)), provided that, prior to accepting ownership  
3 of the land, such corporation enters into an agreement with the  
4 municipality wherein the subject land is located guaranteeing  
5 that it will be used exclusively for recreational purposes, all  
6 of which shall be available to the general public free of  
7 charge. In the event the corporation changes the use of all or a  
8 portion of the land or charges admission or any other fee for  
9 the use or enjoyment of the facilities, the corporation shall  
10 immediately become liable for all roll-back taxes and accrued  
11 interest previously forgiven pursuant hereto; or

12 (7) a religious organization for construction or regular use  
13 as a church, synagogue or other place of worship, including  
14 meeting facilities, parking facilities, housing facilities and  
15 other facilities which further the religious purposes of the  
16 organization.

17 \* \* \*

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

19 Section 8.1. Removal of Land From Preferential Assessment.--

20 (a) A landowner receiving preferential assessment under this  
21 act may remove land from preferential assessment if:

22 (1) the landowner notifies in writing the county assessor by  
23 June 1 of the year immediately preceding the tax year for which  
24 the removal is requested;

25 (2) the entire tract or tracts enrolled on a single  
26 application for preferential assessment is removed from  
27 preferential assessment; and

28 (3) the landowner pays rollback taxes on the entire tract or  
29 tracts as provided for in section 5.1.

30 (b) Land removed from preferential assessment under this

1 section shall not be eligible to be subsequently reenrolled in  
2 preferential assessment by the same landowner.

3 Section 5. This act shall take effect as follows:

4 (1) The addition of section 8.1 of the act shall take  
5 effect in 60 days.

6 (2) The remainder of this act shall take effect  
7 immediately.

