WEST VIRGINIA CODE CHAPTER 8A ARTICLE 12

WV Legislature

§8A-12-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that agriculture is a unique "life support" industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land.

(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily protect agricultural land and woodland in order to:

(1) Assist in sustaining the farming community;

(2) Provide sources of agricultural products within the state for the citizens of the state;

(3) Control the urban expansion which is consuming the agricultural land, topsoil and woodland of the state;

(4) Curb the spread of urban blight and deterioration;

(5) Protect agricultural land and woodland as open-space land;

(6) Enhance tourism; and

(7) Protect worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming.

(c) Further, it is the intent of the Legislature to establish a West Virginia agricultural land protection authority, hereinafter "authority", to assist persons, other entities and counties to obtain funding from any source available to accomplish the purposes of the voluntary farmland protection programs.

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§8A-12-2. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.

(a) The county commission of each county may adopt and implement a farmland protection program within the county. The county commission of each county which decides to adopt and implement a farmland protection program shall appoint a farmland protection board. The farmland protection board shall administer on behalf of the county commission all matters concerning farmland protection. The county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board.

(b) The farmland protection board shall adopt bylaws prescribing the board's officers, meeting dates, record-keeping procedures, meeting attendance requirements and other internal operational procedures. The member of the farmland protection board who is a county commissioner shall serve as temporary chairman of the board until the board's bylaws are adopted and until the board's officers are selected as prescribed by those bylaws. The farmland protection board shall prepare a document proposing a farmland protection program which is consistent with the Legislature's intent.

(c) Each member of the board shall receive expense reimbursement for actual expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.

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§8A-12-3. Content and requirements of farmland protection programs.

(a) An adopted farmland protection program shall include only those qualifying properties which are voluntarily offered into the program by the landowners of the properties.

(b) An adopted farmland protection program shall meet the following minimum requirements:

(1) The program shall be developed by the county farmland protection board and approved by the county commission. The county farmland protection board, in consultation with the local conservation district, shall administer the farmland protection program;

(2) The board shall establish uniform standards and guidelines for the eligibility of properties for the program. The standards and guidelines shall take into consideration the following: Current and past uses of the property; existing property improvements, property tract size and shape; location of the property tract in relation to other potential agricultural property tracts; impending threat of conversion of the property to nonagricultural uses; property ownership and existing deed covenants; and restrictions with respect to the property; and

(3) The guidelines established by the board shall outline the various methods of farmland protection which are available to prospective participating property owners and the procedures to be followed in applying for program consideration.

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§8A-12-4. Farmland protection boards -- appointment, composition, terms.

(a) Composition. -- A farmland protection board shall be composed of seven members, each serving without compensation. Membership on the farmland protection board shall consist of the following: One county commissioner; the executive director of the county development authority; one farmer who is a county resident and a member of the county farm bureau; one farmer who is a county resident and a member of a conservation district; one farmer who is a county resident; and two county residents who are not members of any of the foregoing organizations. All members of the farmland protection board shall be voting members, except the county commissioner who shall serve in an advisory capacity as a nonvoting member.

(b) Terms. –- Each member of a farmland protection board shall be appointed for a term of office of four years except the initial appointment of two voting board members shall be for a term of two years:

(1) No member may serve for more than two consecutive full terms; and

(2) An appointment to fill a vacancy shall be for the remainder of the unexpired term.

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§8A-12-5. Farmland protection boards -- powers.

A farmland protection board has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland: Provided, That the county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board;

(d) Power to implement rules. -- To implement rules necessary to achieve the purposes of the voluntary farmland protection programs;

(e) Power to disseminate information. -- To promote the dissemination of information throughout the county concerning the activities of the farmland protection board; and

(f) Power to seek funding. -- To pursue and apply for any and all county, state, federal and private funding available, consistent with the purpose of the voluntary farmland protection programs.

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§8A-12-6. Farmland protection board duties.

The duties of each farmland protection board are as follows:

(a) To report to the county commission with respect to the acquisition of easements by the farmland protection board within the county and to obtain final approval authority for any and all purchases of easements for the farmland protection program by the board;

(b) To advise the authority concerning county priorities for agricultural protection;

(c) To promote protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements;

(d) To seek and apply for all available funds from federal, state, county and private sources to accomplish the purposes of the voluntary farmland protection programs; and

(e) To perform any other duties assigned by the county commission.

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§8A-12-7. West Virginia agricultural land protection authority -- established.

A West Virginia agricultural land protection authority is established within the Department of Agriculture. The authority has the powers and duties provided in this article.

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§8A-12-8. West Virginia agricultural land protection authority -- board of trustees.

(a) Composition; chairman; quorum; qualifications. -- The authority established on July 1, 2002, shall be governed and administered by a board of trustees composed of the state Treasurer, the Auditor and the commissioner of agriculture, who shall serve as ex officio members, and nine members to be appointed by the Governor, by and with the advice and consent of the Senate, at least five of whom shall be representative of farmers from different areas of the state. The State Treasurer, Auditor and the commissioner of agriculture may appoint designees to serve on the board of trustees. One of the appointed members who is not a representative of farmers shall be a representative of the Division of Natural Resources; one of the appointed members who is not a representative of farmers shall be a representative of the conservation district; and one of the appointed members who is not a representative of farmers shall be a representative of an I.R.C. 501(c)(3) qualified land trust. Three of the five representatives of farmers shall be appointed as follows:

(1) Two from a list of five nominees submitted by the West Virginia Department of Agriculture; and

(2) One from a list of three nominees submitted by the West Virginia farm bureau.

The Governor shall appoint the chairman of the board from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

Notwithstanding any provision of law to the contrary, a person may be appointed to and serve on the board as an appointed member even if prior to the appointment the person conveyed an easement on the person's land to the authority.

(b) Terms. -- (1) The Governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. -- Appointed members shall take the oath of office as prescribed by law.

(d) Compensation and expenses. -- Members shall not receive compensation. Each member of the board shall receive expense reimbursement for actual expenses incurred while

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engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.

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§8A-12-9. West Virginia agricultural land protection authority -- powers.

The authority has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

(d) Power to disseminate information. -- To promote the dissemination of information throughout the state concerning the activities of the farmland protection board; and

(e) Power to seek funding. -- To pursue and apply for any and all state, federal and private funding available consistent with the purpose of the voluntary farmland protection programs.

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§8A-12-10. West Virginia agricultural land protection authority -- duties.

The authority shall:

(a) Disseminate information regarding agricultural land protection and promote the protection of agricultural land;

(b) Assist county farmland protection boards in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection programs;

(c) Upon request of a farmland protection board, provide technical and legal services necessary to procure, acquire, draft, file and record conservation and preservation easements;

(d) Prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report including, but not limited to, the following information:

(1) The cost per easement obtained;

(2) The identity of all applicants for conservation and preservation easements; and

(3) The identity of all applicants from whom conservation and preservation easements have been acquired;

(e) Seek and apply for all available funds from federal, state and private sources to accomplish the purposes of the farmland protection programs.

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§8A-12-11. Definitions.

For purposes of the voluntary farmland protection programs, the following terms have the meanings set forth in this section.

(a) Acquisition of easement. -- The holding or coholding of land-use restrictions as defined in this article, whether obtained through purchase, gift, devise, bequest, grant or contract to cohold with another holder.

(b) Conservation easement. –- This article incorporates the definition of a conservation easement found in section three, article twelve, chapter twenty of this code, except that a conservation easement created under this article must be held or coheld by at least one "holder" as defined in that section in perpetuity.

(c) Farm, farmland or agricultural land. -- A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing and includes all real property designated as wetlands that are part of a property used or useable as farmland.

(d) Preservation easement. -- This article incorporates the definition of a preservation easement found in section three, article twelve, chapter twenty of this code, except that a preservation easement created under this article must be held or coheld by at least one "holder" as defined in that section and must be perpetual in its duration.

(e) Woodland. -- Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is a farm, or held by common ownership of a person or entity owning a farm, but in no event may woodland include land used primarily in commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use.

(f) Opt-out provision. –- A provision which may be inserted into any conservation or preservation easement agreement entered into pursuant to this article which would act as a mechanism to place the easement selling price into an escrow fund for the purpose of allowing the owner or owners up to five years to rescind the decision to enter into the farmland protection program.

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§8A-12-12. Methods of farmland protection.

(a) The authority or a county farmland protection board may negotiate with and compensate eligible property owners to ensure the protection of farmland within the county or state. Methods of protecting farmland may include, but are not limited to, the following:

(1) Acquisition of conservation easement or preservation easement. -- With the consent of a property owner, the county farmland protection board or the authority may acquire and place on record a conservation or preservation easement. Acquired easements apply only to those properties which qualify for consideration under the terms established by an adopted farmland protection program; and

(2) Acquisition of land and disposition. -- With the consent of a property owner, the county farmland protection board or the authority may acquire any property which qualifies for agricultural protection under terms established by an adopted farmland protection program. The county farmland protection board or the authority may lease, as lessor, acquired property for agricultural uses or may restrict the property to agricultural uses and sell the property at fair market value for use as a farm. Any property acquired by a county farmland protection board or the authority and then sold shall be sold subject to a conservation or preservation easement. If the property is leased, the lessee shall pay to the county commission, in addition to rent, an annual fee set by the county commission. The amount of this annual fee shall be commensurate with the amount of property taxes which would be assessed in accordance with the provisions of this code upon the property if the property were held by a private landowner.

(b) Revenues from the sale of properties restricted to agricultural uses shall be used to recover the original purchase costs of the properties and shall be returned to the applicable funds which were used by the county farmland protection board or the authority to purchase the property. Any profits resulting from the sale of property restricted to agricultural uses shall be deposited in a farmland protection fund.

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§8A-12-13. Offer of conservation or preservation easements.

(a) Owner may offer to sell or donate a conservation or preservation easement. -- An owner of farmland may offer by written application to sell or donate a conservation or preservation easement on all or any portion of the farm to a county farmland board or the authority.

(b) Requirements for application to sell or donate. -- In order to be considered by a county farmland protection board or the authority, an application to sell or donate shall:

(1) Include an asking price, if any, at which the owner is willing to sell a conservation or preservation easement and shall specify the terms under which the offer is made; and

(2) Include a complete description of the land, including, but not limited to, an itemization of all debts secured by the land and the identity and amount of all liens.

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§8A-12-14. Value of conservation or preservation easement.

(a) Maximum value. -- The maximum value of any conservation or preservation easement acquired by the county farmland protection board or the authority is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

(b) Fair market value. -- The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this article.

(c) Agricultural value. -- The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the conservation or preservation easement.

(d) Determination of values. -- The value of the easement is determined at the time the county farmland protection board or the authority is requested in writing to acquire the easement. The fair market value is determined by the county farmland protection board or the authority based on one or more appraisals obtained by the county farmland protection board or the authority, and appraisals, if any, of the landowner.

(e) Arbitration. -- If the landowner and the county farmland protection board or the authority do not agree on the value of the easement as determined by the state, the landowner, the county farmland protection board or the authority may request that the matter be referred to a mutually agreed upon mediator for arbitration as to the value of the easement. The arbitration shall be conducted in accordance with the rules promulgated by the American arbitration association. The value determined at arbitration is binding upon the owner and the county farmland protection board or the authority in a purchase of the easement made subsequent to the arbitration for a period of two years, unless the landowner and the county farmland protection board or the authority agree upon a lesser value or the landowner, the county farmland protection board or the authority appeals the results of the arbitration to the circuit court.

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§8A-12-15. Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority.

The authority and county farmland protection boards, in ranking applications for conservation and preservation easements, shall consider the following factors as priorities:

(a) The imminence of residential, commercial or industrial development;

(b) The total acreage offered for conservation or preservation easement;

(c) The presence of prime farmland, unique farmland, farmland of statewide importance, other locally significant farmlands and the productive capacity of the acreage;

(d) Whether the property offered is contiguous or appurtenant to working farms;

(e) The ratio of the asking price, if any, of the easement to the fair market value of the easement;

(f) The historical, architectural, archaeological, cultural, recreational, natural, scenic, source water protection or unique value of the easement: Provided, That determinations of the authority or a county farmland protection board are not a substitute for and do not have the effect of other procedures under state or federal law for granting protected status to land, including, but not limited to, procedures under the National Historic Preservation Act of 1966, as amended, or rules of the director of the historic preservation section of the Division of Culture and History authorized in section eight, article one, chapter twenty-nine of this code, or procedures under the authority of the tourism commissioner or the parks and recreation section of the Division of Natural Resources;

(g) The existence and amount of secured debt upon the property, as determined by a title search, and whether the total exceeds the agricultural value of the land as determined by the appraisal as required in subsection (d), section fourteen of this article; and

(h) The length of the protective easement.

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§8A-12-16. Use of land for which conservation or preservation easement acquired.

(a) Provisions to be included in conservation or preservation easement and county farmland protection board rules, or the authority rules. -- Farmland upon which a conservation or preservation easement has been recorded may be used for the following:

(1) Farm use;

(2) Businesses directly related to the retail sale of farm products;

(3) Any activity performed for religious, charitable or educational purposes or to foster tourism; and

(4) Any home-based business that does not require a Division of Environmental Protection permit to operate.

Notwithstanding any of the exceptions in this subsection, any use of land under preservation or conservation easement must be consistent with the purpose of the farmland protection programs.

(b) Use for commercial, industrial or residential purposes. -- Excepting existing and future uses described in subsections (c), (d) and (e) of this section, a landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

(c) Exclusion for single residential dwelling. -- On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(d) Exclusion for certain existing and future uses. -- This article neither abrogates nor creates any preexisting rights in the land owned by any person not joining as a grantor of a conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right, or prevent any existing or future use consistent with state law with respect to transmission and telecommunications facilities' rights-of-way, easements and licenses.

(e) Condemnation of private property for public use. -- This article neither abrogates nor creates any rights inconsistent with state or federal law respecting the power of

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condemnation of private property for public use. Any person or entity exercising the power of eminent domain must pay compensation at not less than the fair market value of the land to the court having jurisdiction of the proceeding or as directed by the court. The term "fair market value" as used in this subsection shall be determined without regard to the existence of the conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent acquisition of real property, or any right or interest in the property, for public use.

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§8A-12-17. Funding of farmland protection programs.

(a) County funds. --

(1) Creation of county funds. -- Once having created a county farmland protection program, a county commission may authorize the county farmland protection board to create and maintain a farmland protection fund and hire staff as it considers appropriate.

(2) Sources. -- A county farmland protection fund is comprised of:

(A) Any moneys not specifically limited to other uses and dedicated to the fund by a county commission;

(B) Any moneys collected pursuant to section twenty-one of this article;

(C) Any money made available to the fund by grants or transfers from governmental or private sources; and

(D) Any money realized by investments, interest, dividends or distributions.

(b) State fund. --

(1) Created and continued. -- The West Virginia farmland protection fund is created for the purposes specified in this article.

(2) Sources. -- The West Virginia farmland protection fund is comprised of:

(A) Any money made available to the fund by general or special fund appropriations;

(B) Any money made available to the fund by grants or transfers from governmental or private sources;

(C) Any money realized by investments, interest, dividends or distributions; and

(D) Any money appropriated by the Legislature for the West Virginia farmland protection fund.

(3) Disbursements. -- The treasurer may not disburse any money from the fund other than:

(A) For costs associated with the staffing, administration, and technical and legal duties of the authority;

(B) For reasonable expenses incurred by the members of the board of trustees of the authority in the performance of official duties; and

(C) For consideration in the purchase of farmland conservation and preservation easements.

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(4) Money remaining at end of fiscal year. -- Any money remaining in the fund at the end of a fiscal year shall not revert to the General Revenue Fund of the state, but shall remain in the West Virginia farmland protection fund to be used for the purposes specified in this article.

(5) Budget. -- The estimated budget of the authority for the next fiscal year shall be included with the budget of the West Virginia Department of Agriculture.

(6) Audit. -- The fund shall be audited annually.

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§8A-12-18. Disbursements by the authority to county farmland protection boards.

(a) Applications; amount. -- If a county has established a county farmland protection program, the authority shall distribute within sixty days after the end of its fiscal year at least eighty percent of that fiscal year's remaining funds to county farmland protection boards who have certified to the authority that there is then pending an application for one or more conservation or preservation easements. Each certification shall include:

(1) The name of each applicant for an easement and the date of each application for an easement during the fiscal year;

(2) A description of the property upon which an easement is offered; and

(3) An appraisal of the value of the conservation or preservation easement as provided in section fourteen of this article.

(b) Disbursement formula. -- Disbursement of authority funds to qualifying counties shall be based on the ratio of each county farmland protection board's appraisal value of conservation and preservation easement applications, including those applications to donate easements, received during the fiscal year to the total of the appraisal value of all applications for conservation and preservation easements for the fiscal year received by the authority from county farmland protection boards. Applications for easement donations may only be counted if the county farmland protection board holds or coholds the easement.

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§8A-12-19. Classification of land subject to conservation or preservation easement.

Notwithstanding any statute or rule to the contrary, any property held or coheld by a holder under a conservation or preservation easement as defined in this article, regardless of ownership, shall be taxed as "agricultural lands" for ad valorem property tax purposes without further requirement, restriction or disqualification. For ad valorem property tax purposes, any property held or coheld by a holder under a perpetual conservation or preservation easement as defined by this article, regardless of ownership, shall be taxed as "agricultural lands" without further requirement, restriction or disqualification.

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§8A-12-20. Authorization for commissioner of agriculture to promulgate proposed rules.

The commissioner of agriculture may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

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§8A-12-21. Tax on privilege of transferring real property.

(a) Notwithstanding the provisions of section two, article twenty-two, chapter eleven, and effective January 1, 2003, and thereafter, in addition to the tax imposed pursuant to article twenty-two, chapter eleven of this code, any county commission that has created a farmland protection program may impose an additional county excise tax for the privilege of transferring title to real estate at the rate of no more than $1.10¢ for each $500' value or fraction thereof, as represented by any document as defined in section one, article twenty-two, chapter eleven of this code, payable at the time of delivery, acceptance or presentation for recording of the document.

(b) The tax imposed pursuant to this section is to be administered and collected as the tax on the privilege of transferring title to real estate imposed pursuant to the provisions of article twenty-two, chapter eleven of this code.

(c) The tax imposed pursuant to this section is to be used exclusively for the purpose of funding farmland preservation.

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