Comments of House and Senate Agriculture Committee Chairmen

Original: 2141

Re: Proposed Rulemaking
Department of Agriculture, Bureau of Farmland Protection
7 Pa. Code Chapter 137b: Preferential Assessment of Farmland and Forest Land under the Clean and Green Act
I.D. No. 2-133
Published at 30 Pennsylvania Bulletin 4573 (September 2, 2000)

GENERAL PROVISIONS

§137b.1. Purpose.

We recommend deleting the last sentence of this section, as is does not, in any way, accurately reflect the intent of the act.

> The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same rate as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his or her property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is *not* enrolled land will be most noticeable when a county is reassessed. ~~The intent of the Act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land in order to pay taxes.~~

§137b.2. Definitions.

In the annotated version of the proposed rule, the department indicates several times that they did not wish to "stray from the statutory definitions" of certain terms. We concur, but for every instance, not just for select definitions. Each definition which is repeated in the regulations should exactly mirror that which appears in the act. We recommend making the following changes to the following definitions.

As we noted in our comments to the draft version of this proposed rule, paragraphs (i) and (ii) must be removed from the definition of "contributory value of farm buildings," not only to make it consistent with that which is contained in the act, but because paragraph (ii) is contradictory to the definition in the act. Furthermore, it is in contravention to the stated purpose of why the General Assembly enacted the amendments to Act 1974-319: to promote uniformity in administration of the act. Paragraph (i) could possibly be incorporated into the content of §137b.54.

> *Contributory value of farm building*—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.
>
> ~~(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.~~

~~(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.~~

Remove the word "a" from the definition of "enrolled land."

Enrolled land—Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the Act.

To remain consistent with the definition contained in the act, paragraph (ii) must be removed from the definition of "forest reserve." We recommend adding it to §137b.14.

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

~~(i)~~ The term includes farmstead land on the tract.

~~(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.~~

We previously suggested removing the definition of "outdoor recreation" entirely. Nonetheless, we are willing to consent somewhat to the first part of the definition. Paragraphs (i) and (ii), however, impose limitations on the term which have not existed since the act's creation in 1974 and which contradict the intent of the act, as well as proposed §137b.64(c), and must be removed.

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures~~, grading of the land, the disturbance or removal of topsoil~~ or any change to the land which would render it incapable of being immediately converted to agricultural use.

~~(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.~~

~~(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.~~

The definition of "roll-back tax" must reflect the definition contained in the act.

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had that land ~~not~~ been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

While we do not disagree with the concept embodied within the proposed definitions of "separation" and "split-off," these definitions must reflect those which appear in the act.

Separation—A division, by conveyance or other action of the owner, of ~~enrolled land~~ lands devoted to agricultural use, agricultural reserve or forest

reserve and preferentially assessed under the provisions of this act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the Act (72 P.S. § 5490.3).

Split-off—A division, by conveyance or other action of the owner, of ~~enrolled land~~ lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this act into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the Act (72 P.S. § 5490.3).

In light of the language contained in the act at §6(a.3), the following changes must be made to the definition of "transfer."

Transfer— A conveyance of all of the ~~contiguous~~ enrolled land described in a single application for preferential assessment under the Act. ~~Where a single application for preferential assessment includes *non-contiguous* land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.~~

§137b.3. Responsibilities of the Department.

For clarification, and because it appears in the act at §4.1(a), we recommend making the following changes to this proposed section.

(a) *General.* The Department's responsibilities are, by May 1 of each year, to provide the use values described in section 4.1 of the Act (72 P.S. § 5490.4a) and provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the Act.

Furthermore, as eluded to in footnote #47 of the annotated draft version of the proposed rule, we recommend adding the following language, not to the preamble, but to §137b.3.

(c) *Department as resource.* The Department will act as an educational and advisory resource on matters related to the administration and interpretation of this act.

ELIGIBLE LAND

§137b.12. Agricultural use.

To reiterate our previous suggestions to the draft proposed rule, there is no defined term, "agricultural production," while there is a defined term, "agricultural commodity" and we again recommend the following changes to this section.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been ~~in agricultural production~~ producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal government for at least 3 years preceding the application for preferential assessment, and is one of the following:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

(2) Has an anticipated yearly gross ~~agricultural production~~ income of at least $2,000 from the production of an agricultural commodity.

§137b.13. Agricultural reserve.

At least one of the public commentators interpreted this section to mean that wetlands and water areas should not be included when determining total eligible acreage. While we believe the department's intent was to exclude wetlands and water areas from determining the amount of acreage in land capability classifications I-VI, rather than in determining what comprises the required minimum of 10 acres, clarification is obviously needed. In addition, and even though similar language appears in the current regulations found at Pa. Code Chapter 137.9(c), we believe the department may be going beyond the authority provided for in the law regarding the requirement that at least 60% of the agricultural reserve land must be in land classifications I-VI. Also, the definition of "woodlot" includes agricultural reserve land. We recommend the following changes to this section.

Agricultural reserve. Land that is in agricultural reserve is eligible for preferential assessment under the Act if ~~at least 60% of the land is in USDA-NRCS land capability classifications I through VI, excluding water areas and wetland areas, and~~ the land is comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

137b.14. Forest reserve.

While the provision related to the capability of producing annual growth of 25 cubic feet per acre is contained in the regulations at Pa. Code §137.10(a), similar to our comment above regarding agricultural reserve, we question whether the department is going beyond the authority in the act.

In addition, we suggest adding the language we noted removing under the definition of "forest reserve".

(d) *Forest reserve.* Land that is in forest reserve is eligible for preferential assessment under the act if it is presently stocked with trees such that it is capable of producing annual growth of 25 cubic feet per-acre, and the land is comprised of 10 or more contiguous acres (including any farmstead land). The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.

§137b.24. Ineligible land ~~may appear on an application, although it cannot receive preferential assessment.~~

First and most importantly, county assessors absolutely **do not** have any authority to determine what is and is not eligible for preferential assessment. The General Assembly determined eligibility requirements as stated in the act. The last sentence of the first paragraph must be removed. Note our suggested change to the title of this section. We also recommend removing a statement (as noted) from the example and placing it in the first paragraph.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land and may not expand such boundaries beyond those identified in the initial application. A landowner shall not be required, as a condition of county acceptance or approval of the application, to survey or re-deed the tract so as to exclude the ineligible land. ~~The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.~~

Example: A landowner owns a 100-acre tract of land—90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract ~~and the county will not require the 10-acre tract be surveyed out or deeded as a prerequisite to the application being considered~~. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

§137b.26. Land located in more than one tax district.

Our suggestions for the examples in this section are mostly grammatical. See our comment under §137b.43 as well.

Example 1: A landowner has a 100-acre tract of farmland - 94 acres of which ~~lies~~ lie in Township A and 6 acres of which ~~lies~~ lie in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in 2 separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

Example 2: A landowner has a 100-acre tract of farmland - 94 acres of which ~~lies~~ lie in County A and 6 acres of which ~~lies~~ lie in County B. The landowner files an application ~~in each County,~~ seeking preferential assessment ~~of that portion of the 100-acre tract lying within the respective Counties~~. The fact that the tract lies in 2 separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§137b.27. Assessment of ineligible land.

We strongly recommend that the phrase "and buildings" be removed from the first sentence, as it is irrelevant and may cause misinterpretation of the act.

Land ~~and buildings~~ that ~~are~~ is included in an application for preferential assessment under the act but ~~are~~ is ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

APPLICATION PROCESS

§137b.41. Application forms and procedures.

Subsections (a) and (b): We are not sure what "Clean and Green Valuation Application" and "Clean and Green Valuation Worksheet" forms are and believe such forms should, as they were previously, be part of the regulations. There were inconsistencies between the old regulations and old application forms/worksheets, which ultimately led to problems with the administration of the program. Furthermore, because the department is required to provide uniform application forms to the counties (see §4(c) of the act and §12 of Act 1998-156), we think it is imperative that the application forms and any standardized worksheets be included as part of the regulations and therefore, the regulatory review process. Making these items part of the regulations will aid in access by the counties as well. We suggest the following changes:

> *(a) Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" form – a uniform preferential assessment application form developed by the Department. The Department ~~will~~ shall provide an initial supply of these forms to ~~a county upon request~~ counties. The county assessor shall maintain an adequate supply of these forms.
>
> (b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the Act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department ~~will~~ shall provide an initial supply of these forms to ~~a county upon request~~ counties.

Subsection (d): The subsection itself is fine. We note, however, that what is currently contained on the (missing) application form does not mirror this language or that which is required by §4(c).

Subsection (e): In light of §3(e) of the act, we reiterate our previous suggestion that this subsection should be clarified to avoid any willful misinterpretation.

§137b.43. Applications where subject land is located in more than one county.

This section is fine, but Example #2 under §137b.26 indicates that a landowner must file an application in each county and should be changed to reflect what is stated under this section.

§137b.46. Fees of the county board for assessment appeals; recording fees.

§4 (d), (e) and (f)(1) of the act prescribe the fees which may be charged for processing and recording an application. As we previously commented, the intent of the General Assembly is that no fees, other than the initial processing and necessary recording fees, are to be imposed on a landowner. Furthermore, a change in ownership could mean that a landowner is adding land to an application. This would be considered an amendment to an application, which causes

no charge except a recording fee, and this concept is not clear in subsection (b). We once again suggest the following changes (and note the change to the section title):

> (a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the act~~, or for processing changes other than those described in subsection (b)~~. This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.
>
> (b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge any fee for amending an initial application for preferential assessment ~~to reflect changes resulting from one or more of the following:~~
>
> ~~(1) Split-off.~~
>
> ~~(2) Separation.~~
>
> ~~(3) Transfer or change of ownership~~.
>
> (c) *Recording fees.* A recording fee may not be assessed if an application for preferential assessment is not approved.

PREFERENTIAL ASSESSMENT

§137b.51. Assessment procedures.

There are minor grammatical changes which are necessary in subsections (b)(1) and (c)(1): "The" before "Pennsylvania State University" must be capitalized in both paragraphs. Subsection (c)(2) should read:

> (2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.34 (relating to calculating the contributory value of farm buildings), shall be used.

§137b.52. Duration of preferential assessment.

The General Assembly intends for preferential assessment to continue until a land use change takes place, as is stated in §4(b) of the act, and as stated in Pa. Code §137.27. Therefore, there is no provision, and it is not the intent of the General Assembly, to allow for a landowner to terminate preferential assessment in any other manner. The roll-back tax is a penalty, designed to deter a landowner from removing the land from an eligible use. Enrollment in the Clean and Green program is a covenant, and when that covenant is broken by a landowner, a penalty is imposed.

The examples in this section are either contradictory to the act or do nothing to add clarification. To accurately reflect the intent of the General Assembly, the following changes must be made.

(a) General. Enrolled land shall remain ~~under~~ subject to preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain ~~under~~ subject to preferential assessment even if its use changes to either of the other two eligible uses.

Example: A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) No termination of preferential assessment without change of use. An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event – the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve – that terminates preferential assessment and triggers liability for roll-back taxes and interest. ~~Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay were the land not preferentially assessed.~~

~~*Example 1:* An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the Act. The landowner writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.~~

~~*Example 2:* Same facts as Example 1, except the landowner changes the use of the 60 acres of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.~~

~~*Example 3:* Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay — and the county assessor agrees to accept – property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999 – the only tax years of the 7-year period for roll-back tax liability in which the~~

~~landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.~~

~~*Example 4:* Same facts as Example 3, except that on September 1, 2007, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for a period *longer* than the 7-year period for roll-back tax liability, though, the landowner's roll-back tax liability would be zero.~~

Subsection (d), Examples 3 and 4: References are made to continuing to "meet the requirements of section 2 of the act." They should read "section 3 of the act."

Subsection (e): The following changes should be made, as all land subject to an application, whether or not it is contiguous, would have preferential assessment terminated in the cases outlined. The suggestions to paragraph (7) are technical. In addition (and not noted below), the Pa. Code section numbers indicated in paragraphs (4), (8), (9) and (10) should have the titles of those sections noted (as we suggest in paragraph (7) below).

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all ~~contiguous~~ land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all ~~contiguous~~ land enrolled under the application for preferential assessment.

* * *

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for a rural ~~enterprises~~ enterprise incidental to the operational unit, in accordance with section 8(d) of the act and §137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit), the land so used for those purposes.

Subsection (f): The word "allows" in the first sentence should be "allowed".

Subsection (g): The last sentence must be removed, as there is no authority within the law to make a distinction between contiguous and non-contiguous tracts in the same application (see §6(a.3) of the act).

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change to an ineligible use shall not trigger the imposition of roll-back taxes. ~~Where the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer~~

~~of all of the contiguous acreage within such a noncontiguous tract shall not trigger the imposition of roll-back taxes.~~

§137b.53. Calculation and recalculation of preferential assessment.

We have one suggestion to subsection (a), and it is technical, but we think it makes the sentence clearer:

> (a) *New values each year.* As described in § 137b.31 (relating to assessment procedures), the Department will determine the land use subcategories and provide to a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

The Pa. Code section numbers contained in subsections (d) and (e) should note the titles of those sections.

The informal draft circulated by the department included a section that related to spot reassessment. We believe it was a good concept and question why similar language was not included in the proposed rulemaking. It read as follows:

(§137b.33) (c) *Not "reassessment."* A county assessor who calculates the preferential assessment of enrolled land using either of the methods permitted under subsection (a) shall not be considered to have conducted a spot assessment as a result of employing that method.

§137b.54 Calculating the contributory value of farm buildings.

This is the section where the clarification in the proposed definition of the term "contributory value of farm buildings" would be appropriate. Any attempt to extend the term further would allow for willful circumvention of the intent of the statutory definition and for lack of uniformity in administration by counties. The following language is suitable.

> A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land. The method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.

We suggest a change to Example 3, in order to use defined terms. We also believe the example is too specific.

> *Example 3:* A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from ~~swine~~ production of an

agricultural commodity. The landowner ~~sells the swine herd~~ ceases the production of that particular agricultural commodity and does not begin ~~another agricultural production operation~~ producing another agricultural commodity on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

§137b.64. Agricultural reserve land to be open to the public.

We have the following grammatical suggestion to subsection (d):

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

§137b.71. Death of an owner of enrolled land.

Subsection (a): We suggest the following change to the example:

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B—75 acres. Landowner C—2 acres. Landowner D—23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the Act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment. Landowners B and D must file amended applications.

Subsection (b): Similarly, we suggest the following change to Example 1:

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues on each tract and the landowners must file amended applications.

§137b.72. Direct commercial sales of agriculturally related productsand activities; rural enterprises incidental to the operational unit.

The following changes must be made for clarification.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes, if *both* of the following apply to the commercial activity or rural enterprise:

(1) The commercial activity or rural enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on ~~that portion of the enrolled land, which is not subject to roll-back taxes under section 8(d)(2) of the Act (72 P.S. § 5490.8(d)(2))~~ the land; and

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

§137b.73. Wireless or cellular telecommunications facilities.

Subsection (a)(4), to be consistent with §(6)(b.1)(4) of the act, must read:

(4) The tract is neither conveyed nor subdivided. A lease ~~may~~ shall not be considered a subdivision.

We have a technical suggestion in subsection (g): The word "communications" should be changed to "telecommunications".

§137b.74. Option to accept or forgive roll-back taxes in certain instances.

While nothing is technically wrong with this section, we simply question why paragraphs (6) and (7) of subsection (a) are reversed from the order they appear in the act (see §8(b)(6) and (7)).

§137b.75. Transfer of enrolled land for use as a cemetery.

Once land is transferred for use as a cemetery there is no provision in the act (see §8(e)(1)(i)) for the use to change back to agricultural use, agricultural reserve or forest reserve. Furthermore, that land is no longer subject to preferential assessment, so reversion to one of the three eligible uses would require re-application to the program. We suggest the following changes to subsection (b) and to the example, as the language is irrelevant.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, ~~or uses the land for something other than agricultural use, agricultural reserve or forest~~

~~reserve,~~ the nonprofit corporation shall be required to pay roll-back taxes on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery ~~use, agricultural use, agricultural reserve or forest reserve~~. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

§137b.76. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.

We suggest the following changes to subsection (a)(1) and (2). There is nothing in the act (see §8(e)(1)(iii)(B)) to prohibit the paving of the land. Furthermore, we don't see a need for examples, especially those which would be impossible on an unpaved trail anyway (skating).

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes ~~may~~ shall not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land, or an easement or right of way in the land, is transferred to a nonprofit corporation.

(2) The transferred land is used as ~~an unpaved~~ a trail for nonmotorized passive recreational use. ~~Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.~~

The last sentence of subsection (b) should be removed and the other changes as noted below should be made.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)~~—(5)~~ (4) or section 8(e) of the act (72 P.S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes on that land. ~~The land is no longer entitled to preferential assessment.~~

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)~~—(5)~~ (4) or section 8(e) of the act (72 P.S. § 5490.8(e)). The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)~~—(5)~~ (4) or section 8(e) of the act. Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive a preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§137b.81. General.

We believe the comments offered by PFB on pages 24-25 regarding change of use are valid and could perhaps be incorporated into this section. We also suggest making the following revisions to this section, as there is unnecessary repetitive language.

> If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. §5490.3), ~~or uses the land for something other than agricultural use, agricultural reserve or forest reserve,~~ that landowner shall be responsible for the payment of roll-back taxes. The owner of enrolled land ~~may~~ shall not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

§137b.82. Split-off tract.

We suggest the following clarification to paragraph (1).

> (1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of 2—3 acres.

§137b.83. Split-off that complies with section 6(a.1(1)(i) of the act.

In the example, the word "a" must be removed from the following sentence: The remaining 48-acre tract would continue to receive ~~a~~ preferential assessment,.....

§137b.84. Split-off that does not comply with section 6(a.1(1)(i) of the act.

In Example 2, clarification is needed to ensure that an assessor does not charge twice for roll-back taxes on land that was split-off in previous years and on which roll-back taxes were already paid. We suggest the following change.

> *Example 2:* Landowner owns 50 acres of enrolled land. Landowner splits-off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes on the ~~entire 50-acre~~ remaining 44-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract, upon the submission of an amended application.

§137b.85. Split-off occurring through condemnation.

The word "may" must be changed to "shall" in the first sentence.

§137b.86. Split-off occurring through voluntary sale in lieu of condemnation.

Again, the word "may" in the first sentence must be changed to "shall".

§137b.87. Change in use of separated land occurring within 7 years of separation.

For clarification, the first sentence should read: If enrolled land undergoes separation, and one of the tracts created through separation is converted to a use other than agricultural use, agricultural reserve.....

Furthermore, the word "a" should be removed from the last sentence of the first paragraph, where it appears before "preferential assessment." Similarly, the word "the" should be removed from the last sentence of the example where it appears before "preferential assessment".

§137b.88. Change in use of separated land occurring 7 years or more after separation.

The word "a" must be removed from the last sentence of the first paragraph where it appears before "preferential assessment." The word "the" should be removed from the last sentence of the example where it appears before "preferential assessment".

§137b.89. Calculation of roll-back taxes.

We understand that there is some conflict over whether the interest on roll-back taxes should be calculated as simple interest or compound interest. We believe the way it appears in this proposed rule is correct (simple interest). While it might be interpreted either way, we believe the intent of the act at §5.1 is to calculate simple interest, or compound interest would have been specifically indicated.

§137b.93. Disposition of interest on roll-back taxes.

For clarification, we suggest the following changes to subsection (b)(2).

> (2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, ~~in~~ at its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located when using the funding from the special roll-back account.

DUTIES OF COUNTY ASSESSORS

§137b.102. Recordkeeping.

The act clearly states at §5(a)(1) on what documents a county assessor is required to record certain required information. To conform with the specificity of the act, the following changes must be made to this section.

> A county assessor shall indicate on property record cards, assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. ~~A county assessor shall indicate on property record cards such of the foregoing information as it deems appropriate for the performance of its duties under the act and this chapter.~~

§137b.106. Notification of change in preferential assessment status.

The word "the" should be removed from the first sentence where it appears before "preferential assessment status."

MISCELLANEOUS

§137b.131. Civil penalties.

While we have no specific comments on this section, we agree with the comments offered by PFB on pages 20-21 regarding civil penalties.

General Comments

The act (see §10) allows for the renegotiation of open space agreements, to change a covenant under Act 1965-515 to one under Clean and Green. The regulations at Pa. Code §137.28 addressed this issue, as did draft copies of this proposed rule. We believe a section should be included to address this situation.

Similarly, the act also addresses how the State Tax Equalization Board should treat Clean and Green assessments (see §5(c)). The regulations at Pa. Code §137.68 addressed this issue, as did draft copies of this proposed rule. Again, we suggest including a section in the current regulations related to this subject.

Any changes to section titles will need to be reflected in the Table of Contents.