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A Citizens Guide To Pennsylvania's Project 70 Land Acquisition and Borrowing Act

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INTRODUCTION

Pennsylvania citizens sometimes have questions about “Project 70” public lands and the legal limits on the use and disposition of such lands. This Citizen’s Guide is designed to give general information that might help suggest some answers to such questions.

What is Project 70?

“Project 70” generally refers to the Project 70 Land Acquisition and Borrowing Act passed into law in 1964,¹ which followed on the heels of an amendment to the State Constitution allowing the Commonwealth to create debt and issue bonds in the amount of seventy million dollars, specifically for the purpose of acquiring land for State parks, reservoirs, and other conservation, recreation, and historical preservation purposes, and to work with political subdivisions to acquire land for the same purposes. The Act was designed to enable the acquisition of public lands for public parks, reservoirs, and other recreation, conservation, and historical preservation purposes through a mechanism where by the State of Pennsylvania would issue bonds. The Act itself states: “The Commonwealth believes it is fundamental to the public health, prosperity, and general welfare of the people of Pennsylvania that soil and water resources are preserved as well as lands for recreation and conservation of natural and historical resources.”² The Commonwealth believed this Act was necessary due to the rapid growth of the population in Pennsylvania’s urban and suburban areas; if lands were not acquired for preservation purposes at the time they would be lost forever to urban development or become increasingly expensive. The Act indicates that the acquisition of project 70 land is most necessary in counties where the public owns less than 10% of the total land or where, at time of effective date of the act, there is an urban area of more than twenty-five thousand individuals— which covered a substantial number of counties and locations.³

How Is Project 70 Land Acquired?

When the Commonwealth acts to acquire land they must first have the acquisition approved by the Department of Forests and Waters. “The land must be acquired by purchase agreement or by eminent domain proceeding in a manner provided for by applicable provisions of law which may govern land acquisition by the Department of Forests and Waters.”⁴ After the Department has approved the acquisition of land, the land shall not be acquired until a public hearing is held in the county where the land is situated, at this hearing the department shall set

¹ Project 70 Land Acquisition and Borrowing Act of June 22, 1964 P.L. 131 (72 P.S. § 3946 *et seq.*) (hereinafter, “Project 70 Act” or “Act”).

² 72 P.S. § 3946.2.

³ *Id.* At the time of effective date of this act, in Pennsylvania, the public owned less than 10% of the total land or there was an urban area of more than twenty-five thousand individuals in the following counties: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Bradford, Bucks, Butler, Cambria, Carbon, Chester, Columbia, Crawford, Cumberland, Dauphin, Delaware, Erie, Fayette, Greene, Indiana, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Schuylkill, Somerset, Susquehanna, Venango, Washington, Wayne, Westmorland, Wyoming, and York.

⁴ 72 P.S. §3946.17.

forth the area to be taken and the proposed use of the land.⁵ Notice of the public hearing should be given at least two weeks in advance in the newspaper of general circulation in the county where the land is located.

- “Lands that are to be acquired for the propagation and conservation of game threatened by development in urban areas and for other wildlife conservation and recreation purposes, shall be approved by the **PA Game Commission** and shall be acquired by purchase agreement or by eminent domain proceeding.”⁶
- “Lands to be acquired for the conservation and propagation of fish and other aquatic life and for access sites on lakes and waterways for fishing and boating purposes shall be approved by the **PA Fish Commission** and shall be acquired by purchase agreement or by eminent domain proceeding.”⁷
- “Lands to be acquired for recreation, conservation, and historical purposes by a **Political Subdivision** should be first approved by the governing body of the political subdivision. They must send an application, **to the Bureau Of Community Development in the Department of Commerce of the Commonwealth of Pennsylvania**, for approval of state aid.”⁸
- “Whenever lands to be acquired for recreation or conservation purposes contain a historic landmark or are near one the **Historical and Museum Commission** must be contacted.”⁹

All proposals for land acquisition under this act need to be submitted to the State Planning Board for its review and approval, prior to final approval by Governor.

How Can Project 70 Land Be Used?

Any land acquired with Project 70 funds is to be used for recreational, conservational or historical purposes, and cannot be used for other purposes without the approval of the General Assembly. However, the Commonwealth or Political Subdivision, as owners of the land, may issue permits, licenses, or leases for:

- The exploration, development, storage and removal of oil, gas, and or other minerals, or
- For the instillation and use of water, gas, electric, telephone, oil or oil product lines.

Likewise, no lands acquired with funds under the Project 70 Act may be disposed of without the express approval of the General Assembly.¹⁰

⁵ 72 P.S. §3946.17.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 72 P.S. §3946.20(b).

What if Project 70 lands are not used for these limited purposes or disposed of in this manner? The Act provides that “If the provisions of this act are willfully violated by a Political Subdivision of the Commonwealth, it will be the duty of the governing body of that political subdivision to reimburse the Commonwealth in the amount of aid it rendered to it by the Commonwealth in the acquisition of the land plus 6% interest compounded semi-annually from time of acquisition until the date of reimbursement.”¹¹ However, only the Commonwealth of Pennsylvania has the specific authority to enforce the provisions of this requirement.¹² In Quirk v. Schuylkill County Municipal Authority, a citizen brought a claim against the Municipal Authority and the Commonwealth challenging the transfer of a tract of Project 70 land. In this situation the General Assembly had approved the transfer in exchange for another parcel of land. The court here determined that the citizen did not have standing because the ability to sue is reserved for the Commonwealth.¹³ Thus, the Commonwealth is the only party who can enforce Project 70 provisions. This makes for a difficult situation when the Project 70 land is being disposed of or used for purposes other than those enumerated under the Act. It means that citizens have to convince the Commonwealth to deal with the violation in equity proceedings or the issue goes unheard.

What Can A Citizen Do?

Given that only the Commonwealth can enforce the Act, a citizen has two choices. The first is to try to convince the Commonwealth to enforce the Act. Citizens may find that the Commonwealth is reluctant to force economically-challenged municipalities to pay the prescribed economic penalty. The second option for a citizen to challenge a Project 70 violation involving the misuse or improper alienation of land would be under the Public Trust Doctrine, which in general terms views lands held by a governmental entity to be held in trust for the benefit of the public. Under this Doctrine the citizen would have standing to bring a claim if “they can show that there was an absolute dedication of the land in question to public purposes, under an act or ordinance, and the city has since appropriated money for the care, maintenance, and improvement of the land in question, in such circumstances every citizen and taxpayer has an interest.”¹⁴

The application of the Public Trust Doctrine might be complicated by the Donated or Dedicated Property Act, 53 P.S. §§ 3381 – 3386, which in very general terms permits political entities to sell some donated, dedicated, or purchased property upon orphans' court approval, subject to conditions, where the original purposes are no longer practical and the property has ceased to serve the public interest. In the recent case of In re Erie Golf Course, 2010 WL 1078300 (Pa. March 25, 2010), the Pennsylvania Supreme Court strongly suggested that Public Trust Doctrine principles give way to the language of the Act when the two conflict. However, given the language and express intent of the Project 70 Act, and depending on the facts of a particular situation, an argument can be made that the Donated or Dedicated Property Act should not apply when Project 70 lands are involved. If successful, such an analysis would keep the

¹¹ 72 P.S. §3946.20.

¹² *Id.*

¹³ Quirk v. Schuylkill County Municipal Authority, 422 A.2d 904, 905 (Pa. Cmwlth.1980).

¹⁴ Trustees of the Philadelphia Museums v. Trustees of the University of Pennsylvania, 251 Pa. 115, 96 A. 123 (1915).

Public Trust Doctrine a viable means for challenging a use of Project 70 lands in a manner inconsistent with public trust principles.

Conclusion

The Project 70 Land Acquisition and Borrowing Act was a great step forward for protecting land in the Commonwealth. However, it can only be enforced by the Commonwealth itself. The Public Trust Doctrine may provide a way for citizens to have a say on the use and disposition of Project 70 lands.

If you believe that Project 70 lands are being used or disposed of in ways inconsistent with the Project 70 Act, you should consult with an attorney to explore your options.

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