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ASSEMBLY, No. 3612

STATE OF NEW JERSEY
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Senators Allen, Madden, Stack, Assemblywoman Pinkin and
Assemblyman Singleton**

SYNOPSIS

Jake's Law; Incentivizes counties to design and construct completely inclusive playgrounds as a priority for State funding for recreational and conservation purposes.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on December 4, 2017, with amendments.

(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning inclusive playgrounds ²and designated as Jake's
 2 Law², amending P.L.1999, c.50, ²**[and]**² supplementing
 3 P.L.1999, c.152 (C.13:8C-1 et seq.)², and amending and
 4 supplementing² chapter 12 of Title 40 of the Revised Statutes.

5
 6 **BE IT ENACTED** by the Senate and General Assembly of the State
 7 of New Jersey:

8
 9 ²1. R.S.40:12-9 is amended to read as follows:

10 40:12-9 Any two or more municipalities in any county, or any
 11 municipality and the coterminous school district, or any
 12 municipality and county, or any municipality and county park
 13 commission may jointly acquire property for **[and]** or improve,
 14 operate, and maintain, on existing property, any playgrounds,
 15 completely inclusive playgrounds, playfields, gymnasiums, public
 16 baths, swimming pools, or indoor recreation centers, and may
 17 appropriate money therefor. The municipality may pay over to the
 18 board of education of the school district such money as may be so
 19 appropriated to be disbursed by the said board of education for any
 20 of such joint purposes. The county or county park commission may
 21 pay over to the municipality such money as may be appropriated to
 22 be disbursed by the county or county park commission for any such
 23 joint purposes.²

24 (cf: P.L.1948, c.61, s.1)

25
 26 ²**[1.]** 2.² Section 2 of P.L.1999, c.50 (C.52:27D-123.10) is
 27 amended to read as follows:

28 2. a. The Department of Community Affairs in consultation
 29 with the Department of Education shall promulgate rules and
 30 regulations for the design, installation, inspection and maintenance
 31 regarding all playgrounds operated by any governmental entity,
 32 nonprofit entity or private entity. Those regulations shall meet any
 33 standard of care imposed by law on playground operators, and shall
 34 be those guidelines and criteria which are contained in the
 35 Handbook for Public Playground Safety produced by the United
 36 States Consumer Products Safety Commission or any successor.
 37 The rules and regulations shall include special provisions for
 38 playgrounds appropriate for children within the range of ages in day
 39 care settings. ²The rules and regulations shall not apply to
 40 completely inclusive playgrounds.

41 b. (1) The Department of Community Affairs, in consultation
 42 with the Department of Education, shall promulgate rules and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AWC committee amendments adopted June 6, 2016.

²Assembly floor amendments adopted October 7, 2016.

³Assembly floor amendments adopted October 20, 2016.

⁴Senate SCU committee amendments adopted December 4, 2017.

1 regulations for the design, installation, inspection, and maintenance
 2 of completely inclusive playgrounds. Those regulations shall meet
 3 any standard of care imposed by law on playground operators, and
 4 shall be those guidelines and criteria which are contained in the
 5 Handbook for Public Playground Safety produced by the United
 6 States Consumer Products Safety Commission or any successor.
 7 The rules and regulations shall include special provisions for
 8 completely inclusive playgrounds appropriate for children within
 9 the range of ages in day care settings. Only playgrounds that meet
 10 these rules and regulations shall be deemed completely inclusive
 11 playgrounds for the purposes of P.L. , c. (C.) (pending
 12 before the Legislature as this bill).²

13 The rules and regulations shall also include provisions for
 14 ²completely² inclusive playgrounds designed with standards that
 15 generally exceed those required by the "Americans with Disabilities
 16 Act of 1990" (42 U.S.C. s.12101 et seq.) and result in ²[allowing]²
 17 the inclusion of people with disabilities, including children and
 18 adults ²[, to the greatest degree feasible]².

19 ¹[The] ²[b.](2)² The Department of Community Affairs shall
 20 promulgate¹ rules and regulations ¹[shall also include provisions]¹
 21 for ²completely² inclusive playgrounds designed with standards that
 22 generally exceed those required by the "Americans with Disabilities
 23 Act of 1990" (42 U.S.C. s.12101 et seq.) and result in allowing the
 24 inclusion of people with disabilities, including children and adults
 25 ²[, to the greatest degree feasible]². The rules and regulations ¹for
 26 ²completely² inclusive playgrounds¹ shall require park and
 27 playground areas that enable every visitor, regardless of medical
 28 condition, with the chance to engage in the park and playground
 29 experience ²[to the best of the visitor's ability]².

30 ¹[b.]¹ Within 90 days of the effective date of P.L. , c. (C.)
 31 (pending before the Legislature as this bill), and prior to proposing
 32 a rule in the New Jersey Register, the Commissioner of Community
 33 Affairs shall invite and receive recommendations regarding the
 34 adoption of rules and regulations making ²completely inclusive²
 35 playgrounds available to persons of all ages and abilities from
 36 ²[nonprofit]² organizations, ²playground equipment manufacturers,
 37 playground safety consultants, and persons with disabilities² with a
 38 demonstrated expertise in the design and construction of
 39 ²completely² inclusive playgrounds or with a demonstrated
 40 expertise in the promulgation and implementation of accessibility
 41 standards. The rules and regulations shall be proposed within 180
 42 days of the effective date of P.L. , c. (C.) (pending before
 43 the Legislature as this bill), shall be adopted within one year of the
 44 effective date of P.L. , c. (C.) (pending before the
 45 Legislature as this bill), and shall address, among other things, the
 46 following issues as they relate to ²completely² inclusive
 47 playgrounds:

1 (1) Parking. ²If only on-street parking is available, the creation
 2 of accessible parking, including the installation of a curb cut.²

3 (2) Routes of access to playground and related facilities.

4 (3) The use of unitary surfacing in all areas of the playground to
 5 allow the maximum possible access to the playground for people
 6 using wheeled mobility devices.

7 (4) Restroom facilities ²[, including how] . The commissioner
 8 may determine which restroom facilities shall be adapted² to ensure
 9 that families with older children or children with large adaptive
 10 equipment have a safe place to provide toileting needs for their
 11 children.

12 (5) Shade ², so that a minimum of 20 percent of the square
 13 footage of unitary surface and equipment of the playground is
 14 shaded by natural or other means².

15 (6) Fencing.

16 (7) The use of play components that address the physical,
 17 sensory, cognitive, social, emotional, imaginative, and
 18 communication needs of those who will visit the playground.

19 (8) Quiet play areas.

20 (9) ²Universally accessible sand play and water play.

21 (10)² Ramps and transfer points on playground equipment.

22 ²[(11)] ⁴[(10)]² Accessibility of slides and other equipment to
 23 children with cochlear ear implants.]⁴

24 The Commissioner of Community Affairs shall adopt said
 25 recommendations, unless the commissioner determines the
 26 recommendations are inconsistent with the intent and purpose of
 27 P.L. , c. (C.) (pending before the Legislature as this bill), or
 28 otherwise unfeasible. A recommendation shall not be considered
 29 unfeasible if it is demonstrated that the recommendation may be
 30 implemented through the use of commercially available equipment.
 31 The rules and regulations shall exceed the standards required under
 32 the barrier free subcode, adopted pursuant to the "State Uniform
 33 Construction Code Act," P.L.1975, c.217, and the federal
 34 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et
 35 seq.) and any regulations pursuant to those acts. The rules and
 36 regulations relating to inclusive playgrounds shall, at a minimum,
 37 require ²fully² accessible playground surfacing, access ramps
 38 leading up to and within play structures, so that a minimum of
 39 ²[75] ⁵⁰² percent of the elevated play elements on all structures are
 40 accessible to people using wheeled mobility devices, and play
 41 structures designed to facilitate access by adults and children with
 42 disabilities.

43 ²A playground that has been completed as of the effective date of
 44 P.L. , c. (C.) (pending before the Legislature as this bill)
 45 may qualify as a completely inclusive playground if it includes
 46 unitary surfacing and fencing, at least 50 percent elevated play
 47 elements or changes in topographical elevations that function as

1 elevated play elements, and otherwise meets the standards required
 2 by the "Americans with Disabilities Act of 1990" (42 U.S.C.
 3 s.12101 et seq.).²

4 c. The department shall not be responsible for enforcement of
 5 any rules or regulations promulgated by this act, unless the
 6 department is otherwise responsible for enforcement pursuant to
 7 P.L.1975, c.217 (C.52:27D-119 et seq.).
 8 (cf: P.L.1999, c.50, s.2)

9
 10 ²**[2.] 3.**² (New section) a. As used in this section:

11 "Commissioner" means the Commissioner of Environmental
 12 Protection.

13 "Constitutionally dedicated moneys" means the same as that term
 14 is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

15 "Green Acres bond act" means: P.L.1961, c.46; P.L.1971, c.165;
 16 P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265;
 17 P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; P.L.2007, c.119;
 18 P.L.¹2009¹, c.117; and any State general obligation bond act that
 19 may be approved after the date of enactment of P.L. ,
 20 c. (pending before the Legislature as this bill) for the purpose of
 21 providing funding for the acquisition or development of lands for
 22 recreation and conservation purposes or for farmland preservation
 23 purposes.

24 "Green Acres funds" means constitutionally dedicated moneys,
 25 Green Acres bond act moneys, or other State moneys appropriated
 26 to acquire lands for recreation and conservation purposes.

27 ²**["Inclusive]** "Completely inclusive² playground" means a
 28 playground ²**[open to the public outfitted with a wheelchair**
 29 **accessible play surface and no fewer than three play structures],**
 30 designated for public use for children two to five years of age or
 31 five to twelve years of age, with an accessible playground surface, a
 32 playground surface inspection and maintenance schedule consistent
 33 with the standards detailed in the "Americans with Disabilities Act
 34 of 1990" (42 U.S.C. s.12101 et seq.), and² designed in accordance
 35 with the rules and regulations adopted pursuant to section 2 of
 36 P.L.1999, c.50 (C.52:27D-123.10).

37 "Recreation and conservation purposes" means the use of lands
 38 for beaches, biological or ecological study, boating, camping,
 39 fishing, forests, greenways, hunting, natural areas, parks,
 40 playgrounds, protecting historic properties, water reserves,
 41 watershed protection, wildlife preserves, active sports, or a similar
 42 use for either public outdoor recreation or conservation of natural
 43 resources, or both.

44 b. One year after the effective date of P.L. , c. (C.)
 45 (pending before the Legislature as this bill), ¹**[except as provided**
 46 **for in subsection c. of this section, the commissioner shall deny any**
 47 **application submitted by a county seeking to acquire or develop**
 48 **lands for recreational and conservation purposes using Green Acres**

1 funds unless the requesting county has completed or commenced
2 design and construction of at least one inclusive playground prior to
3 the date of the request.

4 c. One year after the effective date of P.L. , c. (C.)
5 (pending before the Legislature as this bill), the commissioner may
6 approve an application submitted by a county without an inclusive
7 playground seeking to acquire or develop lands for recreational and
8 conservation purposes using Green Acres funds provided that the
9 Green Acres funds requested by the county are to be used for the
10 design and construction of an inclusive playground.

11 d.] the commissioner shall prioritize any application submitted
12 by a county seeking to acquire or develop lands for recreational and
13 conservation purposes using Green Acres funds, provided that the
14 Green Acres funds requested by the county are to be used for the
15 design and construction of ²[an] a completely² inclusive
16 playground ²pursuant to section 2 of P.L. , c. (C.)
17 (pending before the Legislature as this bill)². The commissioner
18 shall grant further prioritization to the applications submitted by
19 counties that do not currently operate and maintain an inclusive
20 playground, in an effort to ensure at least one ²[such] inclusive²
21 playground is operated and maintained by each county.

22 c.¹ The board of chosen freeholders of any county or any county
23 park commission may partner with ³[a nonprofit organization]
24 organizations, playground equipment manufacturers, playground
25 safety consultants, and persons with disabilities³, with a
26 demonstrated expertise in the design and construction of inclusive
27 playgrounds, to assist with the design and construction of
28 ²completely² inclusive playgrounds. Any agreement entered into in
29 accordance with this section shall not be subject to the requirements
30 and provisions of the "Local Public Contracts Law," P.L.1971,
31 c.198 (C.40A:11-1 et seq.).

32 ²d. The board of chosen freeholders of ⁴[an] any⁴ county or any
33 county park commission may jointly enter into an agreement
34 pursuant to section 1 of P.L.1948, c.61 ⁴[.]⁴ (R.S.40:12-9) for the
35 construction and maintenance of a completely inclusive playground.
36 For purposes of the prioritization of an application submitted by a
37 county pursuant to subsection b. of section 3 of
38 P.L. , c (C.) (pending before the Legislature as this bill), a
39 completely inclusive playground constructed and maintained
40 pursuant to such an agreement shall be operated and maintained by
41 the county in which it is located.²

42
43 ²[3.] ⁴.² (New section) In the event that State funds are made
44 available to counties for the purpose of constructing inclusive
45 playgrounds, every county receiving funding shall be required to
46 construct and maintain at least one inclusive playground designed in
47 accordance with the rules and regulations adopted pursuant to

1 section 2 of P.L.1999, c.50 (C.52:27D-123.10). The board of
2 chosen freeholders of any county or any county park commission
3 may partner with ³[a nonprofit organization] organizations,
4 playground equipment manufacturers, playground safety
5 consultants, and persons with disabilities³, with a demonstrated
6 expertise in the design and construction of inclusive playgrounds, to
7 assist with the design and construction of inclusive playgrounds.
8 Any agreement entered into in accordance with this section shall
9 not be subject to the requirements and provisions of the "Local
10 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

11

12 ²[4.] 5.² This act shall take effect immediately.