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STATE OF NEW JERSEY
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Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

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District 5 (Camden and Gloucester)

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Huttle, Jones, Assemblyman Rooney and Senator Ruiz**

SYNOPSIS

Jake's Law; requires DCA to promulgate completely inclusive playground regulations; incentivizes counties to design and construct completely inclusive playgrounds.

CURRENT VERSION OF TEXT

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on June 14, 2018, with amendments.

(Sponsorship Updated As Of: 6/26/2018)

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

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

9
 10 1. R.S.40:12-9 is amended to read as follows:

11 40:12-9. Any two or more municipalities in any county, ¹[or]¹
 12 any municipality and the coterminous school district, ¹[or]¹ any
 13 municipality and county, or any municipality and county park
 14 commission may jointly acquire property for **]** ¹ or improve,
 15 operate, and maintain ¹[.]¹ on existing property, any playgrounds,
 16 completely inclusive playgrounds, playfields, gymnasiums, public
 17 baths, swimming pools, or indoor recreation centers, and may
 18 appropriate money therefor. The municipality may pay over to the
 19 board of education of the school district ¹[such] any¹ money as
 20 may be so appropriated to be disbursed by the ¹[said]¹ board of
 21 education for any of ¹[such] these¹ joint purposes. The county or
 22 county park commission may pay over to the municipality ¹[such]
 23 any¹ money as may be ¹so¹ appropriated to be disbursed by the
 24 county or county park commission for any ¹[such] of these¹ joint
 25 purposes.

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

27
 28 ¹[2. Section 2 of P.L.1999, c.50 (C.52:27D-123.10) is amended
 29 to read as follows:

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

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:

¹Senate SSG committee amendments adopted June 14, 2018.

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

15 The rules and regulations shall also include provisions for
16 completely inclusive playgrounds designed with standards that
17 generally exceed those required by the "Americans with Disabilities
18 Act of 1990" (42 U.S.C. s.12101 et seq.) and result in the inclusion
19 of people with disabilities, including children and adults.

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

30 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 completely inclusive
35 playgrounds available to persons of all ages and abilities from
36 organizations, playground equipment manufacturers, playground
37 safety consultants, and persons with disabilities with a demonstrated
38 expertise in the design and construction of completely inclusive
39 playgrounds or with a demonstrated expertise in the promulgation
40 and implementation of accessibility standards. The rules and
41 regulations shall be proposed within 180 days of the effective date
42 of P.L. , c. (C.) (pending before the Legislature as this bill),
43 shall be adopted within one year of the effective date of P.L. ,
44 c. (C.) (pending before the Legislature as this bill), and shall
45 address, among other things, the following issues as they relate to
46 completely inclusive playgrounds:

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

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

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

5 (4) Restroom facilities. The commissioner may determine
6 which restroom facilities shall be adapted to ensure that families
7 with older children or children with large adaptive equipment have
8 a safe place to provide toileting needs for their children.

9 (5) Shade, so that a minimum of 20 percent of the square
10 footage of unitary surface and equipment of the playground is
11 shaded by natural or other means.

12 (6) Fencing.

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

16 (8) Quiet play areas.

17 (9) Ramps and transfer points on playground equipment.

18 The Commissioner of Community Affairs shall adopt said
19 recommendations, unless the commissioner determines the
20 recommendations are inconsistent with the intent and purpose of
21 P.L. , c. (C.) (pending before the Legislature as this bill), or
22 otherwise unfeasible. A recommendation shall not be considered
23 unfeasible if it is demonstrated that the recommendation may be
24 implemented through the use of commercially available equipment.
25 The rules and regulations shall exceed the standards required under
26 the barrier free subcode, adopted pursuant to the "State Uniform
27 Construction Code Act," P.L.1975, c.217, and the federal
28 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et
29 seq.) and any regulations pursuant to those acts. The rules and
30 regulations relating to inclusive playgrounds shall, at a minimum,
31 require accessible playground surfacing, access ramps leading up to
32 and within play structures, so that a minimum of 50 percent of the
33 elevated play elements on all structures are accessible to people
34 using wheeled mobility devices, and play structures designed to
35 facilitate access by adults and children with disabilities.

36 A playground that has been completed as of the effective date of
37 P.L. , c. (C.) (pending before the Legislature as this bill)
38 may qualify as a completely inclusive playground if it includes
39 unitary surfacing and fencing, at least 50 percent elevated play
40 elements or changes in topographical elevations that function as
41 elevated play elements, and otherwise meets the standards required
42 by the "Americans with Disabilities Act of 1990" (42 U.S.C.
43 s.12101 et seq.).

44 c. The department shall not be responsible for enforcement of
45 any rules or regulations promulgated by this act, unless the
46 department is otherwise responsible for enforcement pursuant to
47 P.L.1975, c.217 (C.52:27D-119 et seq.).

48 (cf: P.L.1999, c.50, s.2)]¹

1 ¹2. Section 1 of P.L.1999, c.50 (C.52:27D-123.9) is amended to
2 read as follows:

3 1. For the purposes of **【this act】** P.L.1999, c.50 (C.52:27D-
4 123.9 et seq.):

5 "Completely inclusive playground" means a playground
6 designated for public use for children two to five years of age or
7 five to twelve years of age, with an accessible playground surface, a
8 playground surface inspection and maintenance schedule consistent
9 with the standards detailed in the "Americans with Disabilities Act
10 of 1990" (42 U.S.C. s.12101 et seq.), and designed in accordance
11 with the rules and regulations adopted pursuant to subsection b. of
12 section 2 of P.L.1999, c.50 (C.52:27D-123.10).

13 "Governmental Entity" means the State, its agencies and
14 instrumentalities, a county or municipality, or any agency or
15 instrumentality thereof, a school district, or any other similar public
16 entity or agency, but not the federal government or its agencies and
17 instrumentalities.

18 "Nonprofit entity" means a person or entity which operates a
19 playground open to the public or open to users of a facility operated
20 by the person or entity, and which is an exempt organization
21 pursuant to section 9 of P.L.1966, c.30 (C.54:32B-9), the "Sales and
22 Use Tax Act," but not a governmental entity or the federal
23 government or its agencies and instrumentalities.

24 "Private entity" means any person or entity which operates a
25 playground open to the public or open to users of a facility operated
26 by the person or entity, but not a governmental entity, a nonprofit
27 entity or the federal government or its agencies and
28 instrumentalities.

29 "Playground" means an improved area designed, equipped, and
30 set aside for play of six or more children which is not intended for
31 use as an athletic playing field or athletic court, and shall include
32 any play equipment, surfacing, fencing, signs, internal pathways,
33 internal land forms, vegetation, and related structures.

34 "Supervision" means all general and specific supervision
35 necessary to protect children from unreasonable risk of harm from
36 site hazards, the acts of other children, or the use of the playground
37 in a way that was not intended by the designer or manager of the
38 playground. **【This act】** P.L.1999, c.50 (C.52:27D-123.9 et seq.)
39 shall not expand or reduce existing standards of care to which a
40 playground operator is held.¹

41 (cf: P.L.1999, c.50, s.1)

42

43 ¹3. Section 2 of P.L.1999, c.50 (C.52:27D-123.10) is amended
44 to read as follows:

45 2. a. The Department of Community Affairs, in consultation
46 with the Department of Education, shall promulgate rules and
47 regulations for the design, installation, inspection, and maintenance

1 regarding all playgrounds operated by any governmental entity,
2 nonprofit entity, or private entity. ~~【Those】~~ The regulations shall
3 【meet any standard of care imposed by law on playground
4 operators, and shall be those】 conform to the guidelines and criteria
5 【which are contained】 specified in the Handbook for Public
6 Playground Safety produced by the United States Consumer
7 Products Safety Commission or any successor and shall also meet
8 any standard of care imposed by law on playground operators. The
9 rules and regulations shall include special provisions for
10 playgrounds appropriate for children within the range of ages in day
11 care settings. The rules and regulations promulgated pursuant to
12 this subsection shall not apply to completely inclusive playgrounds.

13 b. (1) The Department of Community Affairs, in consultation
14 with the Department of Education, shall promulgate rules and
15 regulations for the design, installation, inspection, and maintenance
16 of completely inclusive playgrounds. Only playgrounds that meet
17 the requirements of the rules and regulations promulgated pursuant
18 to this subsection shall be deemed completely inclusive playgrounds
19 for the purposes of P.L. _____, c. _____ (C. _____) (pending before the
20 Legislature as this bill). The rules and regulations shall:

21 (a) conform to the guidelines and criteria which are contained in
22 the Handbook for Public Playground Safety produced by the United
23 States Consumer Products Safety Commission or any successor, and
24 meet any standard of care imposed by law on playground operators;

25 (b) include special provisions for completely inclusive
26 playgrounds appropriate for children within the range of ages in day
27 care settings;

28 (c) meet the standards of the "Americans with Disabilities Act
29 of 1990" (42 U.S.C. s.12101 et seq.), result in the inclusion of
30 people with disabilities, including children and adults, and require
31 that park and playground areas enable every visitor, regardless of
32 medical condition, to engage in the park and playground
33 experience;

34 (d) meet the standards required under the barrier free subcode,
35 adopted pursuant to the "State Uniform Construction Code Act,"
36 P.L.1975, c.217 (C.52:27D-119 et seq.); and

37 (e) at a minimum, require accessible playground surfacing,
38 access ramps leading up to and within play structures so that a
39 minimum of 50 percent of the elevated play elements on all
40 structures are accessible to people using wheeled mobility devices,
41 and play structures designed to facilitate access by adults and
42 children with disabilities.

43 (2) The rules and regulations promulgated pursuant to this
44 subsection shall also include, but shall not be limited to, the
45 following:

46 (a) the creation of accessible parking, including the installation
47 of a curb cut, if only on-street parking is available;

- 1 (b) the creation of routes of access to playground and related
2 facilities;
- 3 (c) the use of unitary surfacing in all areas of the playground to
4 allow the maximum possible access to the playground for people
5 using wheeled mobility devices;
- 6 (d) a process for determining which restroom facilities shall be
7 adapted to ensure that families with older children or children with
8 large adaptive equipment have a safe place to provide toileting
9 needs for their children;
- 10 (e) shade requirements, which shall provide that a minimum of
11 20 percent of the square footage of unitary surface and equipment
12 of the playground is shaded by natural or other means;
- 13 (f) fencing requirements;
- 14 (g) the use of play components that address the physical,
15 sensory, cognitive, social, emotional, imaginative, and
16 communication needs of those who will visit the playground;
- 17 (h) the creation of quiet play areas; and
- 18 (i) the creation of ramps and transfer points on playground
19 equipment.
- 20 (3) A playground that has been completed as of the effective date
21 of P.L. , c. (C.) (pending before the Legislature as this
22 bill) may qualify as a completely inclusive playground if it includes
23 unitary surfacing and fencing, at least 50 percent elevated play
24 elements or changes in topographical elevations that function as
25 elevated play elements, and otherwise meets the standards required
26 by the "Americans with Disabilities Act of 1990" (42 U.S.C.
27 s.12101 et seq.).
- 28 (4) Within 90 days of the effective date of P.L. , c. (C.)
29 (pending before the Legislature as this bill), and prior to proposing
30 a rule in the New Jersey Register, the Commissioner of Community
31 Affairs shall invite and receive recommendations regarding the
32 adoption of rules and regulations making completely inclusive
33 playgrounds available to persons of all ages and abilities from
34 organizations, playground equipment manufacturers, playground
35 safety consultants, and persons with disabilities with a
36 demonstrated expertise in the design and construction of completely
37 inclusive playgrounds or with a demonstrated expertise in the
38 implementation of accessibility standards. The commissioner shall
39 adopt the recommendations, unless the commissioner determines
40 the recommendations are inconsistent with the intent and purpose of
41 P.L. , c. (C.) (pending before the Legislature as this bill), or
42 are otherwise unfeasible. A recommendation shall not be
43 considered unfeasible if it is demonstrated that the recommendation
44 may be implemented through the use of commercially available
45 equipment. The rules and regulations required by this subsection
46 shall be proposed within 180 days of the effective date of P.L. ,
47 c. (C.) (pending before the Legislature as this bill), and shall

1 be adopted within one year of the effective date of P.L. _____,
2 c. (C. _____) (pending before the Legislature as this bill).

3 c. The department shall not be responsible for enforcement of
4 any rules or regulations promulgated by **【this act】** P.L.1999, c.50
5 (C.52:27D-123.9 et seq.), unless the department is otherwise
6 responsible for enforcement pursuant to P.L.1975, c.217 (C.52:27D-
7 119 et seq.).¹
8 (cf: P.L.1999, c.50, s.2)

9
10 ¹**【3.】** ^{4.} (New section) a. As used in this section:

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

13 ¹"Completely inclusive playground" means a playground
14 designated for public use for children two to five years of age or
15 five to twelve years of age, with an accessible playground surface, a
16 playground surface inspection and maintenance schedule consistent
17 with the standards detailed in the "Americans with Disabilities Act
18 of 1990" (42 U.S.C. s.12101 et seq.), and designed in accordance
19 with the rules and regulations adopted pursuant to subsection b. of
20 section 2 of P.L.1999, c.50 (C.52:27D-123.10).¹

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

23 "Green Acres bond act" means: P.L.1961, c.46; P.L.1971, c.165;
24 P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265;
25 P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; P.L.2007, c.119;
26 P.L.2009, c.117; and any State general obligation bond act that may
27 be approved after the date of enactment of P.L. _____,
28 c. (pending before the Legislature as this bill) for the purpose of
29 providing funding for the acquisition or development of lands for
30 recreation and conservation purposes or for farmland preservation
31 purposes.

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

35 ¹**【**"Completely inclusive playground" means a playground
36 designated for public use for children two to five years of age or
37 five to twelve years of age, with an accessible playground surface, a
38 playground surface inspection and maintenance schedule consistent
39 with the standards detailed in the "Americans with Disabilities Act
40 of 1990" (42 U.S.C. s.12101 et seq.), and designed in accordance
41 with the rules and regulations adopted pursuant to section 2 of
42 P.L.1999, c.50 (C.52:27D-123.10).**】**¹

43 "Recreation and conservation purposes" means the use of lands
44 for beaches, biological or ecological study, boating, camping,
45 fishing, forests, greenways, hunting, natural areas, parks,
46 playgrounds, protecting historic properties, water reserves,
47 watershed protection, wildlife preserves, active sports, or a similar

1 use for either public outdoor recreation or conservation of natural
2 resources, or both.

3 b. **1[One]** Commencing one¹ year after the effective date of
4 P.L. , c. (C.) (pending before the Legislature as this bill),
5 the commissioner shall prioritize any application submitted by a
6 county seeking to acquire or develop lands for recreational and
7 conservation purposes using Green Acres funds, provided that the
8 Green Acres funds requested by the county are to be used for the
9 design and construction of a completely inclusive playground
10 **1[pursuant to section 2 of P.L. , c. (C.) (pending before**
11 **the Legislature as this bill)]**¹. The commissioner shall grant further
12 prioritization to the applications submitted by counties that do not
13 currently operate and maintain **1[an]** a completely¹ inclusive
14 playground, **1[in an effort]**¹ to ensure at least one completely¹
15 inclusive playground is operated and maintained by each county.

16 c. The board of chosen freeholders of any county or any county
17 park commission may partner with **1[a]**¹ nonprofit **1[organization]**¹
18 organizations, playground equipment manufacturers, playground
19 safety consultants, and persons with disabilities **1[,]**¹ with a
20 demonstrated expertise in the design and construction of
21 completely¹ inclusive playgrounds, to assist with the design and
22 construction of completely inclusive playgrounds. Any agreement
23 entered into in accordance with this section shall not be subject to
24 the requirements and provisions of the "Local Public Contracts
25 Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

26 d. **1[The]** If the¹ board of chosen freeholders of any county or
27 any county park commission **1[may]**¹ jointly **1[enter]** enters¹ into
28 an agreement with a municipality¹ pursuant to **1[section 1 of**
29 **P.L.1948, c.61 (]**¹ **R.S.40:12-9]**¹ for the construction and
30 maintenance of a completely inclusive playground **1[. For]** , for¹
31 purposes of the prioritization of an application submitted by a
32 county pursuant to subsection b. of this¹ section **1[3 of**
33 **P.L. , c (C.) (pending before the Legislature as this bill)]**¹,
34 a completely inclusive playground constructed and maintained
35 pursuant to such an agreement shall be operated and maintained by
36 the county in which it is located.

37
38 **1[4.] 5.**¹ (New section) In the event that State funds are made
39 available to counties for the purpose of constructing completely¹
40 inclusive playgrounds, as defined in section 1 of P.L.1999, c.50¹
41 (C.52:27D-123.9).¹ every county receiving funding shall be
42 required to construct and maintain at least one completely¹
43 inclusive playground designed in accordance with the rules and
44 regulations adopted pursuant to subsection b. of¹ section 2 of
45 P.L.1999, c.50 (C.52:27D-123.10). The board of chosen
46 freeholders of any county or any county park commission may

1 partner with organizations, playground equipment manufacturers,
2 playground safety consultants, and persons with disabilities, with a
3 demonstrated expertise in the design and construction of
4 'completely' inclusive playgrounds, to assist with the design and
5 construction of 'completely' inclusive playgrounds. Any
6 agreement entered into in accordance with this section shall not be
7 subject to the requirements and provisions of the "Local Public
8 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

9
10 '[5.] 6.' This act shall take effect immediately.