

# SENATE, No. 1707

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

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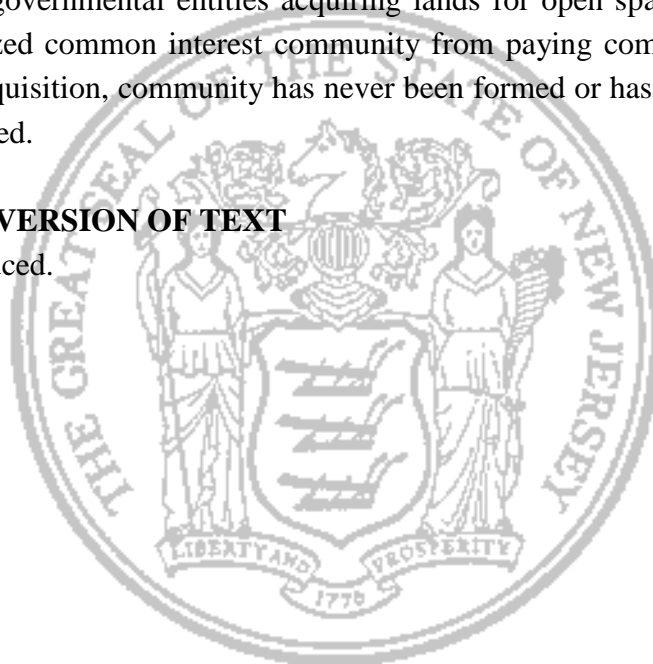
**Assemblyman Houghtaling**

**SYNOPSIS**

Exempts governmental entities acquiring lands for open space located in a deed-authorized common interest community from paying community fees if, at time of acquisition, community has never been formed or has been dissolved or discontinued.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/24/2019)**

1 AN ACT concerning the acquisition of certain lands for recreation  
2 and conservation purposes and supplementing Title 13 of the  
3 Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. The Legislature finds and declares that:

9 a. Enhancing the quality of life of the citizens of New Jersey is a  
10 paramount policy of the State, and open space protects the natural  
11 beauty and resources of the State and provides its citizens and  
12 visitors to New Jersey with greater opportunities for recreation,  
13 relaxation, and education, all of which contribute greatly to the  
14 quality of life;

15 b. A broad diversity of animal and plant species is essential to  
16 sustaining both the environment and the economy of the Garden  
17 State, and the conservation of adequate habitat for those species,  
18 and especially for those that are endangered, threatened, or rare, is  
19 necessary to preserve this biodiversity;

20 c. Acquiring and preserving land for recreation and conservation  
21 purposes also helps protect water supply and quality, which is  
22 critical to the existence of all life;

23 d. Whenever land becomes available for acquisition by a  
24 governmental entity for potential preservation as open space, it is  
25 incumbent upon the governmental entity to make every possible  
26 effort to acquire that land, especially when the land is contiguous to  
27 other preserved land and the sale price is reasonable or even  
28 discounted;

29 e. Antiquated or unnecessary covenants of very little or no  
30 economic value persist in some deeds to properties located in  
31 unformed, dissolved, or discontinued common interest  
32 communities, encumbering the titles in such a way that prevents  
33 their conveyance to a governmental entity to be preserved as open  
34 space;

35 f. Examples of such covenants are those that authorize owners of  
36 contiguous or closely associated properties to form an association  
37 or other common interest community for the purpose of  
38 constructing and maintaining a private road to serve the property  
39 owners, or maintaining a private lake that the property owners all  
40 may access and enjoy; however, in many circumstances these  
41 property owners have never formed an association or other common  
42 interest community or, if one was formed, it has since been  
43 dissolved or discontinued;

44 g. Notwithstanding that such an association or other common  
45 interest community may never have been formed or, if formed, has  
46 since been dissolved or discontinued, a governmental entity may be  
47 reluctant to acquire and preserve a property subject to such a deed  
48 covenant because it does not wish to risk the possibility, remote as

1 it may be, of eventually having to pay dues or other fees or comply  
2 with any other obligation as may be required by the covenant, or  
3 engage in potentially costly or lengthy litigation on the issue;

4 h. Such uncertainty makes it difficult for a governmental entity  
5 to know exactly what financial or other commitment it is making  
6 for the benefit of the public, and for that reason, may cause the  
7 governmental entity to decide, out of an abundance of appropriate  
8 caution in conserving its financial and other assets, to not acquire  
9 the property at issue;

10 i. Such a result is unacceptable for the public policy reasons  
11 cited above; and

12 j. Therefore, it is appropriate and necessary for the State to  
13 declare and provide by law that any such covenant is void in all  
14 respects and unenforceable with regard to land that is acquired by a  
15 governmental entity for preservation as open space for recreation  
16 and conservation purposes.

17

18 2. As used in this act:

19 “Governmental entity” means the State or a county, municipality,  
20 or other political subdivision of the State, or any agency, authority,  
21 department, or other entity thereof.

22 “Recreation and conservation purposes” means the same as that  
23 term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

24

25 3. a. Whenever a governmental entity acquires land to be  
26 preserved for recreation and conservation purposes, and the deed  
27 for the land includes any covenant authorizing the owner of the land  
28 and other landowners whose deeds include the same covenant to  
29 form an association or other common interest community for a  
30 common purpose, which may or may not also authorize dues, fees,  
31 or other obligations to be charged or imposed in connection  
32 therewith, the covenant shall be void in all respects and  
33 unenforceable with regard to the land acquired by the governmental  
34 entity, provided that the governmental entity:

35 (1) acquires the land before any such association or other  
36 common interest community has been formed or after the  
37 dissolution or discontinuation of any previously existing association  
38 or other common interest community; and

39 (2) owns land preserved for recreation and conservation purposes  
40 that is contiguous to the land acquired, or the contiguous land is  
41 owned by another governmental entity for such purposes.

42 b. Nothing in subsection a. of this section shall be construed to  
43 prohibit an association or other common interest community in  
44 existence at the time of acquisition of land by a governmental entity  
45 that will preserve the land for recreation and conservation purposes,  
46 from voluntarily and permanently exempting the governmental  
47 entity, or otherwise releasing the land, from operation or  
48 enforcement of a covenant like that described in subsection a. of

1 this section, including but not limited to, any requirement therein to  
2 pay dues or other fees or comply with any other obligation.

3 c. Whenever a governmental entity acquires land in the manner  
4 described in this act, the governmental entity shall not permit public  
5 access to, or use of, the subject of the covenant, such as, for  
6 example: (1) a private road that leads to or passes by the acquired  
7 land, or (2) a private lake.

8

9 4. This act shall take effect immediately.

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### STATEMENT

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14 This bill would provide that whenever a governmental entity  
15 acquires land to be preserved for recreation and conservation  
16 purposes, and the deed for the land includes any covenant  
17 authorizing the owner of the land and other landowners whose  
18 deeds include the same covenant to form an association or other  
19 common interest community for a common purpose (and perhaps  
20 also authorize dues, fees, or other obligations to be charged or  
21 imposed for that purpose), the covenant would be deemed void in  
22 all respects and unenforceable with regard to the land acquired by  
23 the governmental entity, provided that the governmental entity:

24 (1) acquires the land before any such association or other  
25 common interest community has been formed or after the  
26 dissolution or discontinuation of any previously existing association  
27 or other common interest community; and

28 (2) owns land preserved for recreation and conservation purposes  
29 that is contiguous to the land acquired, or the contiguous land is  
30 owned by another governmental entity for such purposes.

31 This bill is necessary because antiquated or unnecessary  
32 covenants of very little or no economic value persist in some deeds  
33 to properties located in unformed, dissolved, or discontinued  
34 common interest communities, encumbering the titles in such a way  
35 that prevents their conveyance to a governmental entity to be  
36 preserved as open space. Examples of such covenants are those that  
37 authorize owners of contiguous or closely associated properties to  
38 form a common interest community for the purpose of constructing  
39 and maintaining a private road to serve the property owners, or  
40 maintaining a private lake that the property owners all may access  
41 and enjoy. Yet the owners of those properties may never have  
42 formed a common interest community or, if one has been formed, it  
43 has since been dissolved or discontinued.

44 Notwithstanding that such a common interest community may  
45 never have been formed or, if formed, has since been dissolved or  
46 discontinued, a governmental entity may be reluctant to acquire and  
47 preserve a property subject to such a deed covenant because it does  
48 not wish to risk the possibility, remote as it may be, of eventually

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1 having to pay dues or other fees or comply with any other  
2 obligation as may be required by the covenant, or engage in  
3 potentially costly or lengthy litigation on the issue. Such  
4 uncertainty makes it difficult for a governmental entity to know  
5 exactly what financial or other commitment it is making for the  
6 benefit of the public and, for that reason, may cause the  
7 governmental entity to decide, out of an abundance of appropriate  
8 caution in conserving its financial and other assets, to not acquire  
9 the property at issue. Such a result is unacceptable because it is  
10 contrary to the important public policy goal of acquiring and  
11 preserving as much contiguous open space as possible, where  
12 appropriate, for the benefit of the people and the environment.