

ASSEMBLY, No. 527

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman CRECCO

1 **AN ACT** concerning the acquisition of certain flood prone real
2 property in the Central Passaic River Basin floodway, establishing
3 a priority list for real property acquisition, creating a fund therefor,
4 supplementing Title 58 of the Revised Statutes, and making an
5 appropriation.

6

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

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10 1. This act shall be known and may be cited as the "Central Passaic
11 River Basin Floodway Acquisition Act of 1992."

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13 2. The Legislature finds that inadequate regulation of development
14 in floodways has resulted in the construction of hundreds of residential
15 units in the Central Passaic River Basin floodway, which development
16 increased the likelihood of flooding; that nowhere else in the State is
17 a land area in greater danger of flooding than in the basin's floodway;
18 that previous floods in the basin have caused millions of dollars of
19 property damage, disrupted the lives of residents, and taken the lives
20 of some; that it is in the public interest to ensure that the loss of
21 property and lives due to flooding in this area not be repeated; and that
22 although the acquisition of these lands is the most equitable and cost
23 efficient method to accomplish these goals, no adequate program or
24 funding to acquire these flood prone properties is available.

25 The Legislature therefore declares that it is the policy of the State
26 to acquire residential property in the Central Passaic River Basin
27 floodway in order to protect the lives and property of the residents of
28 that area; that the residents of approximately 774 homes in the
29 floodway in the most danger of flooding be the first to be paid the full
30 cost of acquisition and relocation to ensure that they will be able to
31 find suitable alternative housing without additional undue hardship;
32 and that the lands acquired be held by the State and returned to an
33 undeveloped state to prevent future flooding outside the floodway and
34 to preserve wetlands.

1 3. As used in this act:

2 "Central Passaic River Basin floodway" means the floodway, as
3 defined in section 2 of P.L.1962, c.19 (C.58:16A-51), of the Passaic
4 river located in Fairfield township of Essex county, Lincoln Park
5 borough, Little Falls township, Pequannock township, Pompton Lakes
6 borough, and Wayne township;

7 "Commissioner" means the Commissioner of Environmental
8 Protection;

9 "Conservation purposes" means the use of real property for natural
10 areas, wetlands, flood control lands, or other similar uses that do not
11 involve development or the destruction of the natural characteristics
12 of the real property;

13 "Department" means the Department of Environmental Protection;

14 "Real property" means real property, including improvements
15 thereon, rights-of-way, water, riparian and other rights, easements,
16 privileges, and all other rights or interests of any kind, or description
17 in, relating to, or connected with real property.

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19 4. a. Within 180 days of the effective date of this act, the
20 Department of Environmental Protection shall develop a methodology
21 to determine which real properties located in the Central Passaic River
22 Basin floodway are most subject to damage by flooding. The
23 methodology shall review the frequency and severity of floods on
24 those real properties and the potential for major property damage and
25 the potential for loss of life. Upon completion of the methodology, the
26 department shall forward a written copy to the Assembly Environment
27 Committee and the Senate Environment Committee, or their
28 successors.

29 b. Within 180 days of establishing the methodology required in
30 subsection a. of this section, the department shall develop a priority
31 list of specific real properties in the Central Passaic River Basin
32 floodway to be acquired. The priority list shall be established using
33 the methodology established pursuant to subsection a. of this section.
34 The priority list shall include residential real properties and any other
35 real properties that are undeveloped in the Central Passaic River Basin
36 floodway. Upon completion of the priority list the department shall
37 forward a written copy to the Assembly Environment Committee and
38 the Senate Environment Committee, or their successors.

39

40 5. Upon completion of the priority list developed in section 4 of
41 this act, the department shall begin negotiations with the owners of the
42 real property listed on the priority list in order to acquire fee simple
43 absolute title to that real property. In acquiring that real property the
44 department shall pay to the owner the present day fair market value of
45 that real property and any reasonable relocation costs that may be
46 incurred. In acquiring the real properties in the Central Passaic River

1 Basin floodway, the department may exercise its powers of eminent
2 domain pursuant to the "Eminent Domain Act of 1971," P.L.1971,
3 c.361 (C.20:3-1 et seq.). The department may acquire less than fee
4 simple absolute title to undeveloped real property where the
5 department can assure that the interest the department acquires will
6 prevent any development of the property, and that the real property
7 will be used solely for conservation purposes.

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9 6. Upon acquiring the real property pursuant to section 5 of this
10 act, the department shall demolish any structures on the real property,
11 or conduct any work on the real property required to return the real
12 property to a natural state for conservation purposes. Real property,
13 or any interest therein, acquired by the department pursuant to this act
14 shall be held by the department for conservation purposes.

15

16 7. There is established in the department a nonlapsing special fund,
17 to be known as the "Central Passaic River Basin Floodway Acquisition
18 Fund." The fund shall be credited with any appropriations made to it
19 pursuant to law. Monies in the fund may be used only for acquisitions
20 of real property in the Central Passaic River Basin floodway as
21 provided in this act.

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23 8. Within two years of the effective date of this act, the
24 commissioner shall report to the Assembly Environment Committee
25 and the Senate Environment Committee, or their successors, the status
26 of the acquisition program established pursuant to this act. The report
27 shall contain a list of those real properties acquired; a list of those real
28 properties returned to a natural state; a list of those real properties on
29 the priority list that are yet to be acquired and the reasons they have
30 not yet been acquired; the cost of acquiring each property and the cost
31 of returning each to its natural state; an estimate of the environmental
32 impact of the acquisition program on flooding in other parts of the
33 Passaic river basin; and recommendations for additional real property
34 acquisitions in the Passaic river basin to prevent property destruction
35 and loss of life.

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37 9. The department shall, pursuant to the "Administrative Procedure
38 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
39 regulations to implement this act.

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41 10. There is appropriated from the General Fund to the
42 Department of Environmental Protection the sum of \$100,000 for the
43 purpose of developing the methodology and priority list as required
44 pursuant to section 4 of this act. Upon the subsequent enactment and
45 availability of any bond proceeds specifically for the acquisition of land
46 in the Central Passaic River Basin floodway, the money appropriated

1 pursuant to this section shall be repaid to the General Fund from the
2 bond act's proceeds.

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4 11. This act shall take effect immediately.

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7 STATEMENT

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9 This bill establishes an acquisition program for the purchase of
10 properties in the Central Passaic River Basin floodway. The areas to
11 be acquired would be in the floodway, as determined by regulations
12 promulgated by the Department of Environmental Protection, in the
13 municipalities of Fairfield township of Essex county, Lincoln Park
14 borough, Little Falls township, Pequannock township, Pompton Lakes
15 borough, and Wayne township.

16 This bill requires the department, within 180 days of enactment, to
17 establish a methodology for determining which lands in the floodway
18 are most subject to repeated and damaging floods. The department
19 shall, within an additional 180 days, establish a priority list of
20 properties to be acquired. Upon completion of the priority list, the
21 department would begin acquisition. Property owners would be paid
22 present day full market value for their properties, as well as reasonable
23 relocation costs. Once acquired, the department would remove any
24 structures from the properties in order to return them to their natural
25 state. The properties would be held by the department for
26 conservation purposes, thus preventing any development or future
27 damage by flooding, which would alleviate flood problems in other
28 parts of the basin.

29 The department would be required to acquire fee simple absolute
30 title to the properties, but would be permitted to acquire a lesser
31 interest or undeveloped land, such as a conservation easement, if doing
32 so would preclude development of the property and foster
33 conservation. Only residential property may be acquired under this
34 bill, except that undeveloped property may be acquired in order to
35 limit its use to conservation.

36 The bill would also establish a fund to accept any appropriations
37 made to it for acquisition; require that the commissioner report to the
38 Assembly Environment Committee and the Senate Environment
39 Committee on the progress of the acquisition program and as to any
40 recommendations for additional acquisitions within the basin; and
41 provide for an appropriation for the development of the methodology
42 and priority list, which appropriation may be repaid from the proceeds
43 of any bond act established for the acquisition program.

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- 3 Establishes an acquisition program for real property in the Central
4 Passaic River Basin floodway; appropriates \$100,000.