

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1976 and 1935

STATE OF NEW JERSEY

ADOPTED JUNE 10, 1996

Sponsored by Assemblymen CORODEMUS, ARNONE and
KRAMER

1 AN ACT concerning recreation and conservation, farmland
2 preservation, and historic preservation, amending R.S.40:12-14
3 and P.L.1992, c.157, supplementing Title 40 of the Revised
4 Statutes, and repealing parts of the statutory law.

5

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

8

9 1. (New section) As used in this act:

10 "Acquisition" means the securing of a fee simple or a lesser interest
11 in land, including but not limited to an easement restricting
12 development, by gift, purchase, installment purchase agreement,
13 devise, or condemnation;

14 "Charitable conservancy" means a corporation or trust exempt
15 from federal income taxation under paragraph (3) of subsection (c) of
16 section 501 of the federal Internal Revenue Code of 1986 (26 U.S.C.
17 §501(c)(3)), whose purposes include (1) acquisition and preservation
18 of lands in a natural, scenic, or open condition, or (2) historic
19 preservation of historic properties, structures, facilities, sites, areas, or
20 objects, or the acquisition of such properties, structures, facilities,
21 sites, areas, or objects for historic preservation purposes;

22 "County trust fund" means a "County Open Space, Recreation, and
23 Farmland and Historic Preservation Trust Fund" created pursuant to
24 subsection c. of section 2 of this act;

25 "Development" means any improvement to land acquired for
26 recreation and conservation purposes designed to expand and enhance

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:

¹ Assembly floor amendments adopted June 24, 1996.

1 its utilization for those purposes;

2 "Farmland" means land actively devoted to agricultural or
3 horticultural use that is valued, assessed, and taxed pursuant to the
4 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
5 seq.);

6 "Farmland preservation purposes" means the long-term
7 preservation of farmland for agricultural or horticultural use;

8 "Historic preservation" means the performance of any work
9 relating to the stabilization, repair, rehabilitation, renovation,
10 restoration, improvement, protection, or preservation of a historic
11 property, structure, facility, site, area, or object;

12 "Historic property, structure, facility, site, area, or object" means
13 any property, structure, facility, site, area, or object approved for
14 inclusion, or which meets the criteria for inclusion, in the New Jersey
15 Register of Historic Places pursuant to P.L.1970, c.268
16 (C.13:1B-15.128 et seq.);

17 "Land" or "lands" means real property, including improvements
18 thereof or thereon, rights-of-way, water, lakes, riparian and other
19 rights, easements, privileges and all other rights or interests of any
20 kind or description in, relating to or connected with real property;

21 "Municipal trust fund" means a "Municipal Open Space,
22 Recreation, and Farmland and Historic Preservation Trust Fund"
23 created pursuant to subsection c. of section 7 of this act;

24 "Public indoor recreation" means public recreation in enclosed
25 structures or facilities, and includes but is not limited to swimming
26 pools, basketball courts, and ice skating rinks open for public use; and

27 "Recreation and conservation purposes" means the use of lands for
28 parks, open space, natural areas, ecological and biological study,
29 forests, water reserves, wildlife preserves, fishing, hunting, camping,
30 boating, winter sports, or similar uses for either public outdoor
31 recreation or conservation of natural resources, or both, or the use of
32 lands for public indoor recreation.

33

34 2. (New section) a. (1) The governing body of any county may
35 submit to the voters of the county in a general or special election a
36 proposition authorizing imposition of an annual levy for an amount or
37 at a rate deemed appropriate for any or all of the following purposes,
38 or any combination thereof, as determined by the governing body:

39 (a) acquisition of lands for recreation and conservation purposes;

40 (b) development of lands acquired for recreation and conservation
41 purposes;

42 (c) maintenance of lands acquired for recreation and conservation
43 purposes;

44 (d) acquisition of farmland for farmland preservation purposes;

45 (e) historic preservation of historic properties, structures, facilities,

1 sites, areas, or objects, and the acquisition of such properties,
2 structures, facilities, sites, areas, or objects for historic preservation
3 purposes; or

4 (f) payment of debt service on indebtedness issued or incurred by
5 a county for any of the purposes set forth in subparagraphs (a), (b), (d)
6 or (e) of this paragraph.

7 (2) The amount or rate of the annual levy may be subdivided in the
8 proposition to reflect the relative portions thereof to be allocated to
9 any of the respective purposes specified in paragraph (1) of this
10 subsection or may be depicted as a total amount or rate, to be
11 subdivided in a manner determined previously, or to be determined at
12 a later date, by the governing body of the county after conducting at
13 least one public hearing thereon.

14 b. Upon approval of the proposition by a majority of the votes
15 cast by the voters of the county, the governing body of the county may
16 annually raise by taxation a sum not to exceed the amount or rate set
17 forth in the proposition approved by the voters for the purposes
18 specified therein. If the amount or rate set forth in the proposition
19 was not subdivided among the various purposes, the governing body
20 of the county may determine the appropriate amount or rate to be
21 allocated to each purpose after conducting at least one public hearing
22 thereon.

23 c. Amounts raised by the levy imposed pursuant to this section
24 shall be deposited into a "County Open Space, Recreation, and
25 Farmland and Historic Preservation Trust Fund" to be created by the
26 county, and shall be used exclusively for the purposes authorized by
27 the voters of the county. Any interest or other income earned on
28 monies deposited into the county trust fund shall be credited to the
29 fund to be used for the same purposes as the principal. Separate
30 accounts may be created within the county trust fund for the deposit
31 of revenue to be expended for each of the purposes specified in the
32 proposition approved by the voters of the county.

33 d. (1) (a) Selection of lands for acquisition for recreation and
34 conservation purposes shall be in accordance with an open space and
35 recreation plan prepared and adopted by the county.

36 (b) Selection of projects to develop or maintain lands acquired for
37 recreation and conservation purposes shall be in accordance with a
38 open space and recreation development and maintenance plan prepared
39 and adopted by the county.

40 (c) Selection of farmland for acquisition for farmland preservation
41 purposes shall be in accordance with a farmland preservation plan
42 prepared and adopted by the county or pursuant to the provisions of
43 the "Agriculture Retention and Development Act," P.L.1983, c.32
44 (C.4:1C-11 et al.) or any other law enacted for the purpose of
45 preserving farmland, or any rules or regulations adopted pursuant

1 thereto.

2 (d) Selection of historic preservation projects shall be in
3 accordance with a historic preservation plan prepared and adopted by
4 the county.

5 (2) Monies in the county trust fund may be used to pay the cost of
6 preparing and adopting the plans required by this subsection.

7 e. The governing body of a county may submit to the voters of
8 the county in a general or special election a proposition amending or
9 supplementing a proposition previously submitted, approved, and
10 implemented as provided pursuant to this section either (1) changing
11 the amount or rate of the annual levy, or (2) adding or removing
12 purposes authorized pursuant to this section for which the levy may be
13 expended. Upon approval of the amendatory or supplementary
14 proposition by a majority of the votes cast by the voters of the county,
15 the governing body of the county shall implement it in the same
16 manner as set forth in this act for implementation of the original
17 proposition.

18 f. Upon petition to the governing body of a county signed by the
19 voters of the county equal in number to at least 15% of the votes cast
20 therein at the last preceding general election, filed with the governing
21 body at least 90 days before a general or special election, the
22 governing body of the county shall submit to the voters of the county
23 in the general or special election the proposition otherwise authorized
24 pursuant to subsection a. or subsection e. of this section, as the case
25 may be.

26
27 3. (New section) a. Any county whose voters, prior to the
28 effective date of this act, approved pursuant to P.L.1989, c.30
29 (C.40:12-16 et seq.) a proposition authorizing the acquisition of lands
30 for conservation as open space or as farmland shall be deemed to have
31 approved a proposition for ¹[any or all of]¹ the purposes specified in
32 paragraph (1) of subsection a. of section 2 of this act ¹, but excluding
33 the purposes specified in subparagraphs (b) and (c) of that paragraph
34 if the proposition was approved prior to the 24 months immediately
35 preceding the effective date of P.L....., c.....(C.....)(now pending
36 before the Legislature as this bill),¹ at the amount or rate specified in
37 the original proposition, which purposes shall be determined by the
38 governing body of the county after conducting at least one public
39 hearing thereon. The county open space and farmland preservation
40 trust fund created for the purposes of P.L.1989, c.30 (C.40:12-16 et
41 seq.) shall be dissolved and any monies remaining therein shall be
42 deposited into the "County Open Space, Recreation, and Farmland and
43 Historic Preservation Trust Fund" created pursuant to subsection c. of
44 section 2 of this act to be utilized for the purposes determined by the
45 governing body of the county as authorized pursuant to this

1 subsection.

2 b. Any county whose voters, prior to the effective date of this act,
3 approved pursuant to R.S.40:12-10 et seq. a proposition authorizing
4 the establishment, maintenance, and improvement of a system of public
5 recreation shall be deemed to have approved a proposition for any or
6 all of the purposes specified in paragraph (1) of subsection a. of
7 section 2 of this act at the amount or rate specified in the original
8 proposition, which purposes shall be determined by the governing
9 body of the county after conducting at least one public hearing
10 thereon. Any fund created for the purposes of R.S.40:12-10 et seq.
11 shall be dissolved and any monies remaining therein shall be deposited
12 into the "County Open Space, Recreation, and Farmland and Historic
13 Preservation Trust Fund" created pursuant to subsection c. of section
14 2 of this act to be utilized for the purposes determined by the
15 governing body of the county as authorized pursuant to this
16 subsection.

17

18 4. (New section) Lands acquired by a county using revenue
19 raised pursuant to this act shall be held in trust and shall be used
20 exclusively for the purposes authorized under this act.

21 After conducting at least one public hearing thereon and upon a
22 finding that the purposes of this act might otherwise be better served
23 or that any land acquired by a county pursuant thereto is required for
24 another public use, which finding shall be set forth in a resolution or
25 ordinance, as appropriate, adopted by the governing body of the
26 county, the governing body may convey, through sale, exchange,
27 transfer, or other disposition, title to, or a lesser interest in, that land,
28 provided that the governing body shall replace any land conveyed
29 under this section by land of at least equal fair market value and of
30 reasonably equivalent usefulness, size, quality, and location to the land
31 conveyed, and any monies derived from the conveyance shall be
32 deposited into the "County Open Space, Recreation, and Farmland and
33 Historic Preservation Trust Fund" created pursuant to subsection c. of
34 section 2 of this act for use for the purposes authorized by this act for
35 monies in the county trust fund. Any such conveyance shall be made
36 in accordance with the "Local Lands and Buildings Law," P.L.1971,
37 c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange,
38 the land or improvements thereon to be transferred to the trust shall
39 be at least equal in fair market value and of reasonably equivalent
40 usefulness, size, quality, and location to the land or improvements
41 transferred from the trust.

42

43 5. (New section) Amounts raised by taxation for the purposes of
44 this act shall be apportioned by the county board of taxation among
45 the municipalities within the county in accordance with R.S.54:4-49.

1 The amounts so apportioned shall be assessed, levied and collected in
2 the same manner and at the same time as other county taxes. The tax
3 collected pursuant to this act shall be referred to as the "County Open
4 Space, Recreation, and Farmland and Historic Preservation Tax."
5

6 6. (New section) a. The governing body of any county in which
7 the voters of the county have approved a proposition in accordance
8 with this act may adopt a resolution authorizing the distribution of
9 monies deposited into the "County Open Space, Recreation, and
10 Farmland and Historic Preservation Trust Fund" created pursuant to
11 subsection c. of section 2 of this act, in such portions as deemed
12 appropriate, to municipalities within the county or to charitable
13 conservancies, to be used in the county by those municipalities or
14 charitable conservancies for the purposes of this act in accordance
15 with the provisions, conditions, and requirements of thereof, provided
16 that any municipality or charitable conservancy receiving such monies
17 has presented a plan to the county documenting the proposed use of
18 the monies.

19 b. Lands acquired by a municipality pursuant to this section shall
20 be held in trust and shall be used exclusively for the purposes
21 authorized by this act.

22 c. The governing body of a municipality acquiring lands using
23 monies received pursuant to this section shall have full control of the
24 lands and may adopt an ordinance providing for (1) suitable rules,
25 regulations, and bylaws for use of the lands, (2) the enforcement of
26 those rules, regulations and bylaws, and (3) when appropriate, the
27 charging and collection of reasonable fees for use of the lands or for
28 activities conducted thereon.

29 d. In order to qualify to receive monies from a county trust fund
30 pursuant to this section, the board of directors, board of trustees, or
31 other governing body, as appropriate, of an applying charitable
32 conservancy shall:

33 (1) demonstrate to the governing body of the county that it
34 qualifies as a charitable conservancy;

35 (2) agree to use the monies only in connection with lands located
36 in the county and for the purposes authorized by this act;

37 (3) agree to make and keep the lands accessible to the public,
38 unless the governing body of the county determines that public
39 accessibility would be detrimental to the lands or to any natural or
40 historic resources associated therewith;

41 (4) agree not to sell, lease, exchange, transfer, or donate the lands
42 for which the monies received were allocated for use pursuant to this
43 section, except upon approval of the governing body of the county
44 under such conditions as the governing body may establish; and

45 (5) agree to execute and donate to the county at no charge (a) a

1 conservation restriction or historic preservation restriction, as the case
2 may be, pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.), or (b) a
3 development easement, as defined pursuant to section 3 of P.L.1983,
4 c.32 (C.4:1C-13), as appropriate, on the lands for which the monies
5 received were allocated for use pursuant to this section.

6

7 7. (New section) a. (1) The governing body of any municipality
8 may submit to the voters of the municipality in a general or special
9 election a proposition authorizing imposition of an annual levy for an
10 amount or at a rate deemed appropriate for any or all of the following
11 purposes, or any combination thereof, as determined by the governing
12 body:

13 (a) acquisition of lands for recreation and conservation purposes;

14 (b) development of lands acquired for recreation and conservation
15 purposes;

16 (c) maintenance of lands acquired for recreation and conservation
17 purposes;

18 (d) acquisition of farmland for farmland preservation purposes;

19 (e) historic preservation of historic properties, structures, facilities,
20 sites, areas, or objects, and the acquisition of such properties,
21 structures, facilities, sites, areas, or objects for historic preservation
22 purposes; or

23 (f) payment of debt service on indebtedness issued or incurred by
24 a municipality for any of the purposes set forth in subparagraphs (a),
25 (b), (d) or (e) of this paragraph.

26 (2) The amount or rate of the annual levy may be subdivided in the
27 proposition to reflect the relative portions thereof to be allocated to
28 any of the respective purposes specified in paragraph (1) of this
29 subsection or may be depicted as a total amount or rate, to be
30 subdivided in a manner determined previously, or to be determined at
31 a later date, by the governing body of the municipality after
32 conducting at least one public hearing thereon.

33 b. Upon approval of the proposition by a majority of the votes
34 cast by the voters of the municipality, the governing body of the
35 municipality may annually raise by taxation a sum not to exceed the
36 amount or rate set forth in the proposition approved by the voters for
37 the purposes specified therein. If the amount or rate set forth in the
38 proposition was not subdivided among the various purposes, the
39 governing body of the municipality may determine the appropriate
40 amount or rate to be allocated to each purpose after conducting at
41 least one public hearing thereon.

42 c. Amounts raised by the levy imposed pursuant to this section
43 shall be deposited into a "Municipal Open Space, Recreation, and
44 Farmland and Historic Preservation Trust Fund" to be created by the
45 municipality, and shall be used exclusively for the purposes authorized

1 by the voters of the municipality. Any interest or other income earned
2 on monies deposited into the municipal trust fund shall be credited to
3 the fund to be used for the same purposes as the principal. Separate
4 accounts may be created within the municipal trust fund for the deposit
5 of revenue to be expended for each of the purposes specified in the
6 proposition approved by the voters of the municipality.

7 d. The governing body of a municipality may submit to the voters
8 of the municipality in a general or special election a proposition
9 amending or supplementing a proposition previously submitted,
10 approved, and implemented as provided pursuant to this section either
11 (1) changing the amount or rate of the annual levy, or (2) adding or
12 removing purposes authorized pursuant to this section for which the
13 levy may be expended. Upon approval of the amendatory or
14 supplementary proposition by a majority of the votes cast by the voters
15 of the municipality, the governing body of the municipality shall
16 implement it in the same manner as set forth in this act for
17 implementation of the original proposition.

18 e. Upon petition to the governing body of a municipality signed
19 by the voters of the municipality equal in number to at least 15% of
20 the votes cast therein at the last preceding general election, filed with
21 the governing body at least 90 days before a general or special
22 election, the governing body of the municipality shall submit to the
23 voters of the municipality in the general or special election the
24 proposition otherwise authorized pursuant to subsection a. or
25 subsection d. of this section, as the case may be.

26
27 8. (New section) Any municipality whose voters, prior to the
28 effective date of this act, approved pursuant to R.S.40:12-10 et seq.
29 a proposition authorizing the establishment, maintenance, and
30 improvement of a system of public recreation shall be deemed to have
31 approved a proposition for any or all of the purposes specified in
32 paragraph (1) of subsection a. of section 7 of this act at the amount or
33 rate specified in the original proposition, which purposes shall be
34 determined by the governing body of the municipality after conducting
35 at least one public hearing thereon. Any fund created for the purposes
36 of R.S.40:12-10 et seq. shall be dissolved and any monies remaining
37 therein shall be deposited into the "Municipal Open Space, Recreation,
38 and Farmland and Historic Preservation Trust Fund" created pursuant
39 to subsection c. of section 7 of this act to be utilized for the purposes
40 determined by the governing body of the municipality as authorized
41 pursuant to this section.

42
43 9. (New section) Lands acquired by a municipality using revenue
44 raised pursuant to this act shall be held in trust and shall be used
45 exclusively for the purposes authorized under this act.

1 After conducting at least one public hearing thereon and upon a
2 finding that the purposes of this act might otherwise be better served
3 or that any land acquired by a municipality pursuant thereto is required
4 for another public use, which finding shall be set forth in an ordinance
5 adopted by the governing body of the municipality, the governing body
6 may convey, through sale, exchange, transfer, or other disposition,
7 title to, or a lesser interest in, that land, provided that the governing
8 body shall replace any land conveyed under this section by land of at
9 least equal fair market value and of reasonably equivalent usefulness,
10 size, quality, and location to the land conveyed, and any monies
11 derived from the conveyance shall be deposited into the "Municipal
12 Open Space, Recreation, and Farmland and Historic Preservation
13 Trust Fund" created pursuant to subsection c. of section 7 of this act
14 for use for the purposes authorized by this act for monies in the
15 municipal trust fund. Any such conveyance shall be made in
16 accordance with the "Local Lands and Buildings Law," P.L.1971,
17 c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange,
18 the land or improvements thereon to be transferred to the trust shall
19 be at least equal in fair market value and of reasonably equivalent
20 usefulness, size, quality, and location to the land or improvements
21 transferred from the trust.

22

23 10. R.S.40:12-14 is amended to read as follows:

24 40:12-14. Any two or more municipalities may jointly establish,
25 maintain, and improve, or maintain and improve if already established,
26 a public recreation system including parks, open space, and
27 playgrounds [, as provided in R.S.40:12-10 through R.S.40:12-13] .
28 (cf: P.L.1993, c.37, s.3)

29

30 11. Section 7 of P.L.1992, c.157 (C.40:12-16.1) is amended to
31 read as follows:

32 7. The county agriculture development board of a county in which
33 the voters of the county have approved, in a general or special
34 election, a proposition authorizing the acquisition of lands for
35 [conservation as open space or as] farmland preservation purposes
36 pursuant to P.L.1989, c.30 (C.40:12-16 et seq.) or P.L. , c. (C.)
37 (now before the Legislature as this bill) shall, pursuant to the
38 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), adopt a
39 prioritized list of farmland eligible for acquisition of development
40 easements thereon by installment purchase agreements pursuant to the
41 provisions of P.L.1992, c.157 (C.40:12-16.1 et al.) if the county
42 intends to acquire development easements on farmland in that manner.
43 The governing body of the county shall annually appropriate from the
44 [county open space and farmland preservation trust fund] "County
45 Open Space, Recreation, and Farmland and Historic Preservation

1 Trust Fund" created pursuant to subsection c. of section 2 of P.L. . . .
2 c. (C.) (now before the Legislature as this bill) such amounts as
3 it may deem necessary to finance the acquisition of development
4 easements on farmland within that county by installment purchase
5 agreement.

6 (cf: P.L.1992, c.157, s.7)

7

8 12. R.S.40:12-10 through R.S.40:12-13, sections 1, 2, 3, and 4 of
9 P.L.1989, c.30 (C.40:12-16; 40:12-17; 40:12-18; and 40:12-19), and
10 section 1 of P.L.1994, c.125 (C.40:12-19.1) are repealed; however,
11 any proposition proposed thereunder and scheduled prior to the
12 effective date of this act for placement on the ballot may nevertheless
13 be placed on the ballot for consideration by the voters of the county
14 or municipality, as the case may be, but shall be implemented as
15 provided pursuant to this act.

16

17 13. This act shall take effect immediately and shall retroactively
18 apply to any proposition identical or similar to that described in this
19 act that is approved by the voters of any county or municipality, as the
20 case may be, prior to the effective date of this act.

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22

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24

25 Consolidates and revises county and municipal open space and
26 farmland tax referendum laws.