

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
27 its utilization for those purposes;

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

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.

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

3 "Historic preservation" means the performance of any work
4 relating to the stabilization, repair, rehabilitation, renovation,
5 restoration, improvement, protection, or preservation of a historic
6 property, structure, facility, site, area, or object;

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

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

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

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

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

28

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

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

35 (b) development of lands acquired for recreation and conservation
36 purposes;

37 (c) maintenance of lands acquired for recreation and conservation
38 purposes;

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

40 (e) historic preservation of historic properties, structures, facilities,
41 sites, areas, or objects, and the acquisition of such properties,
42 structures, facilities, sites, areas, or objects for historic preservation
43 purposes; or

44 (f) payment of debt service on indebtedness issued or incurred by
45 a county for any of the purposes set forth in subparagraphs (a), (b), (d)

1 or (e) of this paragraph.

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

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

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

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

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

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

42 (d) Selection of historic preservation projects shall be in
43 accordance with a historic preservation plan prepared and adopted by
44 the county.

45 (2) Monies in the county trust fund may be used to pay the cost of

1 preparing and adopting the plans required by this subsection.

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

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

21

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

38 b. Any county whose voters, prior to the effective date of this act,
39 approved pursuant to R.S.40:12-10 et seq. a proposition authorizing
40 the establishment, maintenance, and improvement of a system of public
41 recreation shall be deemed to have approved a proposition for any or
42 all of the purposes specified in paragraph (1) of subsection a. of
43 section 2 of this act at the amount or rate specified in the original
44 proposition, which purposes shall be determined by the governing
45 body of the county after conducting at least one public hearing

1 thereon. Any fund created for the purposes of R.S.40:12-10 et seq.
2 shall be dissolved and any monies remaining therein shall be deposited
3 into the "County Open Space, Recreation, and Farmland and Historic
4 Preservation Trust Fund" created pursuant to subsection c. of section
5 2 of this act to be utilized for the purposes determined by the
6 governing body of the county as authorized pursuant to this
7 subsection.

8

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

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

33

34 5. (New section) Amounts raised by taxation for the purposes of
35 this act shall be apportioned by the county board of taxation among
36 the municipalities within the county in accordance with R.S.54:4-49.
37 The amounts so apportioned shall be assessed, levied and collected in
38 the same manner and at the same time as other county taxes. The tax
39 collected pursuant to this act shall be referred to as the "County Open
40 Space, Recreation, and Farmland and Historic Preservation Tax."

41

42 6. (New section) a. The governing body of any county in which
43 the voters of the county have approved a proposition in accordance
44 with this act may adopt a resolution authorizing the distribution of
45 monies deposited into the "County Open Space, Recreation, and

1 Farmland and Historic Preservation Trust Fund" created pursuant to
2 subsection c. of section 2 of this act, in such portions as deemed
3 appropriate, to municipalities within the county or to charitable
4 conservancies, to be used in the county by those municipalities or
5 charitable conservancies for the purposes of this act in accordance
6 with the provisions, conditions, and requirements of thereof, provided
7 that any municipality or charitable conservancy receiving such monies
8 has presented a plan to the county documenting the proposed use of
9 the monies.

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

13 c. The governing body of a municipality acquiring lands using
14 monies received pursuant to this section shall have full control of the
15 lands and may adopt an ordinance providing for (1) suitable rules,
16 regulations, and bylaws for use of the lands, (2) the enforcement of
17 those rules, regulations and bylaws, and (3) when appropriate, the
18 charging and collection of reasonable fees for use of the lands or for
19 activities conducted thereon.

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

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

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

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

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

36 (5) agree to execute and donate to the county at no charge (a) a
37 conservation restriction or historic preservation restriction, as the case
38 may be, pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.), or (b) a
39 development easement, as defined pursuant to section 3 of P.L.1983,
40 c.32 (C.4:1C-13), as appropriate, on the lands for which the monies
41 received were allocated for use pursuant to this section.

42

43 7. (New section) a. (1) The governing body of any municipality
44 may submit to the voters of the municipality in a general or special
45 election a proposition authorizing imposition of an annual levy for an

1 amount or at a rate deemed appropriate for any or all of the following
2 purposes, or any combination thereof, as determined by the governing
3 body:

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

5 (b) development of lands acquired for recreation and conservation
6 purposes;

7 (c) maintenance of lands acquired for recreation and conservation
8 purposes;

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

10 (e) historic preservation of historic properties, structures, facilities,
11 sites, areas, or objects, and the acquisition of such properties,
12 structures, facilities, sites, areas, or objects for historic preservation
13 purposes; or

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

17 (2) The amount or rate of the annual levy may be subdivided in the
18 proposition to reflect the relative portions thereof to be allocated to
19 any of the respective purposes specified in paragraph (1) of this
20 subsection or may be depicted as a total amount or rate, to be
21 subdivided in a manner determined previously, or to be determined at
22 a later date, by the governing body of the municipality after
23 conducting at least one public hearing thereon.

24 b. Upon approval of the proposition by a majority of the votes
25 cast by the voters of the municipality, the governing body of the
26 municipality may annually raise by taxation a sum not to exceed the
27 amount or rate set forth in the proposition approved by the voters for
28 the purposes specified therein. If the amount or rate set forth in the
29 proposition was not subdivided among the various purposes, the
30 governing body of the municipality may determine the appropriate
31 amount or rate to be allocated to each purpose after conducting at
32 least one public hearing thereon.

33 c. Amounts raised by the levy imposed pursuant to this section
34 shall be deposited into a "Municipal Open Space, Recreation, and
35 Farmland and Historic Preservation Trust Fund" to be created by the
36 municipality, and shall be used exclusively for the purposes authorized
37 by the voters of the municipality. Any interest or other income earned
38 on monies deposited into the municipal trust fund shall be credited to
39 the fund to be used for the same purposes as the principal. Separate
40 accounts may be created within the municipal trust fund for the deposit
41 of revenue to be expended for each of the purposes specified in the
42 proposition approved by the voters of the municipality.

43 d. The governing body of a municipality may submit to the voters
44 of the municipality in a general or special election a proposition
45 amending or supplementing a proposition previously submitted,

1 approved, and implemented as provided pursuant to this section either
2 (1) changing the amount or rate of the annual levy, or (2) adding or
3 removing purposes authorized pursuant to this section for which the
4 levy may be expended. Upon approval of the amendatory or
5 supplementary proposition by a majority of the votes cast by the voters
6 of the municipality, the governing body of the municipality shall
7 implement it in the same manner as set forth in this act for
8 implementation of the original proposition.

9 e. Upon petition to the governing body of a municipality signed
10 by the voters of the municipality equal in number to at least 15% of
11 the votes cast therein at the last preceding general election, filed with
12 the governing body at least 90 days before a general or special
13 election, the governing body of the municipality shall submit to the
14 voters of the municipality in the general or special election the
15 proposition otherwise authorized pursuant to subsection a. or
16 subsection d. of this section, as the case may be.

17

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

33

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

37 After conducting at least one public hearing thereon and upon a
38 finding that the purposes of this act might otherwise be better served
39 or that any land acquired by a municipality pursuant thereto is required
40 for another public use, which finding shall be set forth in an ordinance
41 adopted by the governing body of the municipality, the governing body
42 may convey, through sale, exchange, transfer, or other disposition,
43 title to, or a lesser interest in, that land, provided that the governing
44 body shall replace any land conveyed under this section by land of at
45 least equal fair market value and of reasonably equivalent usefulness,

1 size, quality, and location to the land conveyed, and any monies
2 derived from the conveyance shall be deposited into the "Municipal
3 Open Space, Recreation, and Farmland and Historic Preservation
4 Trust Fund" created pursuant to subsection c. of section 7 of this act
5 for use for the purposes authorized by this act for monies in the
6 municipal trust fund. Any such conveyance shall be made in
7 accordance with the "Local Lands and Buildings Law," P.L.1971,
8 c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange,
9 the land or improvements thereon to be transferred to the trust shall
10 be at least equal in fair market value and of reasonably equivalent
11 usefulness, size, quality, and location to the land or improvements
12 transferred from the trust.

13

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

15 40:12-14. Any two or more municipalities may jointly establish,
16 maintain, and improve, or maintain and improve if already established,
17 a public recreation system including parks, open space, and
18 playgrounds [, as provided in R.S.40:12-10 through R.S.40:12-13] .
19 (cf: P.L.1993, c.37, s.3)

20

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

23 7. The county agriculture development board of a county in which
24 the voters of the county have approved, in a general or special
25 election, a proposition authorizing the acquisition of lands for
26 [conservation as open space or as] farmland preservation purposes
27 pursuant to P.L.1989, c.30 (C.40:12-16 et seq.) or P.L. , c. (C.)
28 (now before the Legislature as this bill) shall, pursuant to the
29 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), adopt a
30 prioritized list of farmland eligible for acquisition of development
31 easements thereon by installment purchase agreements pursuant to the
32 provisions of P.L.1992, c.157 (C.40:12-16.1 et al.) if the county
33 intends to acquire development easements on farmland in that manner.
34 The governing body of the county shall annually appropriate from the
35 [county open space and farmland preservation trust fund] "County
36 Open Space, Recreation, and Farmland and Historic Preservation
37 Trust Fund" created pursuant to subsection c. of section 2 of P.L. ,
38 c. (C.) (now before the Legislature as this bill) such amounts as
39 it may deem necessary to finance the acquisition of development
40 easements on farmland within that county by installment purchase
41 agreement.

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

43

44 12. R.S.40:12-10 through R.S.40:12-13, sections 1, 2, 3, and 4 of
45 P.L.1989, c.30 (C.40:12-16; 40:12-17; 40:12-18; and 40:12-19), and

1 section 1 of P.L.1994, c.125 (C.40:12-19.1) are repealed; however,
2 any proposition proposed thereunder and scheduled prior to the
3 effective date of this act for placement on the ballot may nevertheless
4 be placed on the ballot for consideration by the voters of the county
5 or municipality, as the case may be, but shall be implemented as
6 provided pursuant to this act.

7

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

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16 Consolidates and revises county and municipal open space and
17 farmland tax referendum laws.