

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1110 and 1158

STATE OF NEW JERSEY

ADOPTED JUNE 6, 1996

Sponsored by Senators KYRILLOS, CIESLA, INVERSO and
Assemblyman Corodemus

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 intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 20, 1996.

² Assembly floor amendments adopted July 18, 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,
46 facilities, sites, areas, or objects, and the acquisition of such

1 properties, structures, facilities, sites, areas, or objects for historic
2 preservation purposes; or

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

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

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

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

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

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

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

46 (d) Selection of historic preservation projects shall be in

1 accordance with a historic preservation plan prepared and adopted by
2 the county.

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

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

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

24

25 3. (New section) a. Any county whose voters, prior to the
26 effective date of this act, approved pursuant to P.L.1989, c.30
27 (C.40:12-16 et seq.) a proposition authorizing the acquisition of lands
28 for conservation as open space or as farmland shall be deemed to have
29 approved a proposition for ¹[any or all of]¹ the purposes specified in
30 paragraph (1) of subsection a. of section 2 of this act ¹, but excluding
31 the ²[purposes] purpose ² specified in {subparagraphs (b) and}
32 subparagraph² (c) of that paragraph if the proposition was approved
33 prior to the 24 months immediately preceding the effective date of
34 P.L....., c.....(C.....)(now pending before the Legislature as this
35 bill),¹ at the amount or rate specified in the original proposition, which
36 purposes shall be determined by ²adoption of a resolution or
37 ordinance, as appropriate, by² the governing body of the county after
38 conducting at least one public hearing thereon. The county open space
39 and farmland preservation trust fund created for the purposes of
40 P.L.1989, c.30 (C.40:12-16 et seq.) shall be dissolved and any monies
41 remaining therein shall be deposited into the "County Open Space,
42 Recreation, and Farmland and Historic Preservation Trust Fund"
43 created pursuant to subsection c. of section 2 of this act to be utilized
44 for the purposes determined by the governing body of the county as
45 authorized pursuant to this subsection.

46 b. Any county whose voters, prior to the effective date of this act,

1 approved pursuant to R.S.40:12-10 et seq. a proposition authorizing
2 the establishment, maintenance, and improvement of a system of public
3 recreation shall be deemed to have approved a proposition for any or
4 all of the purposes specified in paragraph (1) of subsection a. of
5 section 2 of this act at the amount or rate specified in the original
6 proposition, which purposes shall be determined by 2adoption of a
7 resolution or ordinance, as appropriate, by² the governing body of the
8 county after conducting at least one public hearing thereon. Any fund
9 created for the purposes of R.S.40:12-10 et seq. shall be dissolved and
10 any monies remaining therein shall be deposited into the "County Open
11 Space, Recreation, and Farmland and Historic Preservation Trust
12 Fund" created pursuant to subsection c. of section 2 of this act to be
13 utilized for the purposes determined by the governing body of the
14 county as authorized pursuant to this subsection.

15

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

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

40

41 5. (New section) Amounts raised by taxation for the purposes of
42 this act shall be apportioned by the county board of taxation among
43 the municipalities within the county in accordance with R.S.54:4-49.
44 The amounts so apportioned shall be assessed, levied and collected in
45 the same manner and at the same time as other county taxes. The tax
46 collected pursuant to this act shall be referred to as the "County Open

1 Space, Recreation, and Farmland and Historic Preservation Tax."

2

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

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

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

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

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

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

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

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

42 (5) agree to execute and donate to the county at no charge (a) a
43 conservation restriction or historic preservation restriction, as the case
44 may be, pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.), or (b) a
45 development easement, as defined pursuant to section 3 of P.L.1983,
46 c.32 (C.4:1C-13), as appropriate, on the lands for which the monies

1 received were allocated for use pursuant to this section.

2

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

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

10 (b) development of lands acquired for recreation and conservation
11 purposes;

12 (c) maintenance of lands acquired for recreation and conservation
13 purposes;

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

15 (e) historic preservation of historic properties, structures, facilities,
16 sites, areas, or objects, and the acquisition of such properties,
17 structures, facilities, sites, areas, or objects for historic preservation
18 purposes; or

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

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

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

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

1 proposition approved by the voters of the municipality.

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

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

21

22 8. (New section) Any municipality whose voters, prior to the
23 effective date of this act, approved pursuant to R.S.40:12-10 et seq.
24 a proposition authorizing the establishment, maintenance, and
25 improvement of a system of public recreation 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 7 of this act at the amount or
28 rate specified in the original proposition, which purposes shall be
29 determined by ²adoption of an ordinance by² the governing body of the
30 municipality after conducting at least one public hearing thereon. Any
31 fund created for the purposes of R.S.40:12-10 et seq. shall be
32 dissolved and any monies remaining therein shall be deposited into the
33 "Municipal Open Space, Recreation, and Farmland and Historic
34 Preservation Trust Fund" created pursuant to subsection c. of section
35 7 of this act to be utilized for the purposes determined by the
36 governing body of the municipality as authorized pursuant to this
37 section.

38

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

42 After conducting at least one public hearing thereon and upon a
43 finding that the purposes of this act might otherwise be better served
44 or that any land acquired by a municipality pursuant thereto is required
45 for another public use, which finding shall be set forth in an ordinance
46 adopted by the governing body of the municipality, the governing body

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

17

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

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

24

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

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

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

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

9

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

14

15

16

17

18 Consolidates and revises county and municipal open space and
19 farmland tax referendum laws.