

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1110 and 1158

STATE OF NEW JERSEY

ADOPTED JUNE 6, 1996

Sponsored by Senators KYRILLOS, CIESLA and INVERSO

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;

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (e) historic preservation of historic properties, structures,
45 facilities, sites, areas, or objects, and the acquisition of such
46 properties, structures, facilities, sites, areas, or objects for historic

1 preservation purposes; or

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

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

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

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

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

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

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

45 (d) Selection of historic preservation projects shall be in
46 accordance with a historic preservation plan prepared and adopted by

1 the county.

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

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

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

23

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

44 b. Any county whose voters, prior to the effective date of this act,
45 approved pursuant to R.S.40:12-10 et seq. a proposition authorizing
46 the establishment, maintenance, and improvement of a system of public

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

13

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

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

38

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

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

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

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

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

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

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

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

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

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

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

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

8 (b) development of lands acquired for recreation and conservation
9 purposes;

10 (c) maintenance of lands acquired for recreation and conservation
11 purposes;

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

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

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

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

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

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

46 d. The governing body of a municipality may submit to the voters

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

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

19

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

35

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

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

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

14

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

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

21

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

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

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

44

45 12. R.S.40:12-10 through R.S.40:12-13, sections 1, 2, 3, and 4 of
46 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.