

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;

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.);

32 "Farmland preservation purposes" means the long-term

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.

1 preservation of farmland for agricultural or horticultural use;

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

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

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

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

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

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

27

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

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

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

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

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

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

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

46 (2) The amount or rate of the annual levy may be subdivided in the

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

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

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

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

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

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

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

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

45 e. The governing body of a county may submit to the voters of the
46 county in a general or special election a proposition amending or

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

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

18

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

35 b. Any county whose voters, prior to the effective date of this act,
36 approved pursuant to R.S.40:12-10 et seq. a proposition authorizing
37 the establishment, maintenance, and improvement of a system of public
38 recreation shall be deemed to have approved a proposition for any or
39 all of the purposes specified in paragraph (1) of subsection a. of
40 section 2 of this act at the amount or rate specified in the original
41 proposition, which purposes shall be determined by the governing
42 body of the county after conducting at least one public hearing
43 thereon. Any fund created for the purposes of R.S.40:12-10 et seq.
44 shall be dissolved and any monies remaining therein shall be deposited
45 into the "County Open Space, Recreation, and Farmland and Historic
46 Preservation Trust Fund" created pursuant to subsection c. of section

1 2 of this act to be utilized for the purposes determined by the
2 governing body of the county as authorized pursuant to this
3 subsection.

4

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

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

29

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

37

38 6. (New section) a. The governing body of any county in which
39 the voters of the county have approved a proposition in accordance
40 with this act may adopt a resolution authorizing the distribution of
41 monies deposited into the "County Open Space, Recreation, and
42 Farmland and Historic Preservation Trust Fund" created pursuant to
43 subsection c. of section 2 of this act, in such portions as deemed
44 appropriate, to municipalities within the county or to charitable
45 conservancies, to be used in the county by those municipalities or
46 charitable conservancies for the purposes of this act in accordance

1 with the provisions, conditions, and requirements of thereof, provided
2 that any municipality or charitable conservancy receiving such monies
3 has presented a plan to the county documenting the proposed use of
4 the monies.

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

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

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

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

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

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

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

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

37

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

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

45 (b) development of lands acquired for recreation and conservation
46 purposes;

- 1 (c) maintenance of lands acquired for recreation and conservation
2 purposes;
- 3 (d) acquisition of farmland for farmland preservation purposes;
- 4 (e) historic preservation of historic properties, structures, facilities,
5 sites, areas, or objects, and the acquisition of such properties,
6 structures, facilities, sites, areas, or objects for historic preservation
7 purposes; or
- 8 (f) payment of debt service on indebtedness issued or incurred by
9 a municipality for any of the purposes set forth in subparagraphs (a),
10 (b), (d) or (e) of this paragraph.
- 11 (2) The amount or rate of the annual levy may be subdivided in the
12 proposition to reflect the relative portions thereof to be allocated to
13 any of the respective purposes specified in paragraph (1) of this
14 subsection or may be depicted as a total amount or rate, to be
15 subdivided in a manner determined previously, or to be determined at
16 a later date, by the governing body of the municipality after
17 conducting at least one public hearing thereon.
- 18 b. Upon approval of the proposition by a majority of the votes cast
19 by the voters of the municipality, the governing body of the
20 municipality may annually raise by taxation a sum not to exceed the
21 amount or rate set forth in the proposition approved by the voters for
22 the purposes specified therein. If the amount or rate set forth in the
23 proposition was not subdivided among the various purposes, the
24 governing body of the municipality may determine the appropriate
25 amount or rate to be allocated to each purpose after conducting at
26 least one public hearing thereon.
- 27 c. Amounts raised by the levy imposed pursuant to this section
28 shall be deposited into a "Municipal Open Space, Recreation, and
29 Farmland and Historic Preservation Trust Fund" to be created by the
30 municipality, and shall be used exclusively for the purposes authorized
31 by the voters of the municipality. Any interest or other income earned
32 on monies deposited into the municipal trust fund shall be credited to
33 the fund to be used for the same purposes as the principal. Separate
34 accounts may be created within the municipal trust fund for the deposit
35 of revenue to be expended for each of the purposes specified in the
36 proposition approved by the voters of the municipality.
- 37 d. The governing body of a municipality may submit to the voters
38 of the municipality in a general or special election a proposition
39 amending or supplementing a proposition previously submitted,
40 approved, and implemented as provided pursuant to this section either
41 (1) changing the amount or rate of the annual levy, or (2) adding or
42 removing purposes authorized pursuant to this section for which the
43 levy may be expended. Upon approval of the amendatory or
44 supplementary proposition by a majority of the votes cast by the voters
45 of the municipality, the governing body of the municipality shall
46 implement it in the same manner as set forth in this act for

1 implementation of the original proposition.

2 e. Upon petition to the governing body of a municipality signed by
3 the voters of the municipality equal in number to at least 15% of the
4 votes cast therein at the last preceding general election, filed with the
5 governing body at least 90 days before a general or special election,
6 the governing body of the municipality shall submit to the voters of the
7 municipality in the general or special election the proposition
8 otherwise authorized pursuant to subsection a. or subsection d. of this
9 section, as the case may be.

10

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

26

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

30 After conducting at least one public hearing thereon and upon a
31 finding that the purposes of this act might otherwise be better served
32 or that any land acquired by a municipality pursuant thereto is required
33 for another public use, which finding shall be set forth in an ordinance
34 adopted by the governing body of the municipality, the governing body
35 may convey, through sale, exchange, transfer, or other disposition,
36 title to, or a lesser interest in, that land, provided that the governing
37 body shall replace any land conveyed under this section by land of at
38 least equal fair market value and of reasonably equivalent usefulness,
39 size, quality, and location to the land conveyed, and any monies
40 derived from the conveyance shall be deposited into the "Municipal
41 Open Space, Recreation, and Farmland and Historic Preservation
42 Trust Fund" created pursuant to subsection c. of section 7 of this act
43 for use for the purposes authorized by this act for monies in the
44 municipal trust fund. Any such conveyance shall be made in
45 accordance with the "Local Lands and Buildings Law," P.L.1971,
46 c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange,

1 the land or improvements thereon to be transferred to the trust shall
2 be at least equal in fair market value and of reasonably equivalent
3 usefulness, size, quality, and location to the land or improvements
4 transferred from the trust.

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

7 40:12-14. Any two or more municipalities may jointly establish,
8 maintain, and improve, or maintain and improve if already established,
9 a public recreation system including parks, open space, and
10 playgrounds [, as provided in R.S.40:12-10 through R.S.40:12-13].
11 (cf: P.L.1993, c.37, s.3)

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

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

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

35
36 12. R.S.40:12-10 through R.S.40:12-13, sections 1, 2, 3, and 4 of
37 P.L.1989, c.30 (C.40:12-16; 40:12-17; 40:12-18; and 40:12-19), and
38 section 1 of P.L.1994, c.125 (C.40:12-19.1) are repealed; however,
39 any proposition proposed thereunder and scheduled prior to the
40 effective date of this act for placement on the ballot may nevertheless
41 be placed on the ballot for consideration by the voters of the county
42 or municipality, as the case may be, but shall be implemented as
43 provided pursuant to this act.

44
45 13. This act shall take effect immediately and shall retroactively
46 apply to any proposition identical or similar to that described in this

1 act that is approved by the voters of any county or municipality, as the
2 case may be, prior to the effective date of this act.

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7 Consolidates and revises county and municipal open space and
8 farmland tax referendum laws.