

SENATE, No. 1158

STATE OF NEW JERSEY

INTRODUCED MAY 16, 1996

By Senators KYRILLOS, CIESLA, Martin, Cafiero and  
Bennett

1 AN ACT concerning recreation and conservation, farmland  
2 preservation, and historic preservation, amending RS.40:12-14 and  
3 P.L.1992, c.157, supplementing Title 40 of the Revised Statutes,  
4 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 from  
15 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 preservation  
33 of farmland for agricultural or horticultural use;

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

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

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

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

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

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

26

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

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

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

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

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

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

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

45 (2) The amount or rate of the annual levy may be subdivided in the  
46 proposition to reflect the relative portions thereof to be allocated to

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

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

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

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

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

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

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

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

44 e. The governing body of a county may submit to the voters of the  
45 county in a general or special election a proposition amending or  
46 supplementing a proposition previously submitted, approved, and

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

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

17

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

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

1 governing body of the county as authorized pursuant to this  
2 subsection.

3

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

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

28

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

36

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

1 that any municipality or charitable conservancy receiving such monies  
2 has presented a plan to the county documenting the proposed use of  
3 the monies.

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

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

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

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

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

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

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

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

36

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

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

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

46 (c) maintenance of lands acquired for recreation and conservation

1 purposes;

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

3 (e) historic preservation of historic properties, structures, facilities,  
4 sites, areas, or objects, and the acquisition of such properties,  
5 structures, facilities, sites, areas, or objects for historic preservation  
6 purposes; or

7 (f) payment of debt service on indebtedness issued or incurred by  
8 a municipality for any of the purposes set forth in subparagraphs (a)  
9 through (e) of this paragraph.

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

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

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

36 d. The governing body of a municipality may submit to the voters  
37 of the municipality in a general or special election a proposition  
38 amending or supplementing a proposition previously submitted,  
39 approved, and implemented as provided pursuant to this section either  
40 (1) changing the amount or rate of the annual levy, or (2) adding or  
41 removing purposes authorized pursuant to this section for which the  
42 levy may be expended. Upon approval of the amendatory or  
43 supplementary proposition by a majority of the votes cast by the voters  
44 of the municipality, the governing body of the municipality shall  
45 implement it in the same manner as set forth in this act for  
46 implementation of the original proposition.

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

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

25  
26 9. (New section) Lands acquired by a municipality using revenue  
27 raised pursuant to this act shall be held in trust and shall be used  
28 exclusively for the purposes authorized under this act.

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

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

4  
5 10. R.S.40:12-14 is amended to read as follows:

6 40:12-14. Any two or more municipalities may jointly establish,  
7 maintain, and improve, or maintain and improve if already established,  
8 a public recreation system including parks, open space, and  
9 playgrounds [, as provided in R.S.40:12-10 through R.S.40:12-13].

10 (cf: P.L.1993, c.37, s.3)

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

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

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

34  
35 12. R.S.40:12-10 through R.S.40:12-13, sections 1, 2, 3, and 4 of  
36 P.L.1989, c.30 (C.40:12-16; 40:12-17; 40:12-18; and 40:12-19), and  
37 section 1 of P.L.1994, c.125 (C.40:12-19.1) are repealed; however,  
38 any proposition proposed thereunder and scheduled prior to the  
39 effective date of this act for placement on the ballot may be placed on  
40 the ballot for consideration by the voters of the county or municipality,  
41 as the case may be.

42  
43 13. This act shall take effect immediately.

## STATEMENT

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2  
3 This bill would consolidate and revise two overlapping laws  
4 concerned with submitting propositions to voters of counties or  
5 municipalities to seek voter approval of the imposition of an annual  
6 levy for raising revenue to acquire, develop and maintain parks and  
7 open space and preserve farmland. One of those laws (C.40:12-16 et  
8 seq.) authorizes counties only to submit a proposition to the voters for  
9 an annual levy raising revenue for the acquisition only of lands for  
10 conservation as open space or as farmland. The other law (R.S.40:12-  
11 10 et seq.) authorizes both counties and municipalities to submit a  
12 proposition to the voters for an annual levy to raise revenue for the  
13 establishment, maintenance, and improvement of a public recreation  
14 system.

15 The bill would authorize a county or municipality to submit to the  
16 voters a proposition authorizing imposition of an annual levy for an  
17 amount or at a rate deemed appropriate for any or all of the following  
18 purposes, or any combination thereof, as determined by the governing  
19 body of the county or municipality, as the case may be:

- 20 (1) acquisition of lands for recreation and conservation purposes;  
21 (2) development (for recreation and conservation purposes) of  
22 lands acquired for recreation and conservation purposes;  
23 (3) maintenance of lands acquired for recreation and conservation  
24 purposes;  
25 (4) acquisition of farmland for farmland preservation purposes;  
26 (5) historic preservation of historic properties, structures, facilities,  
27 sites, areas, or objects, and the acquisition of such properties,  
28 structures, facilities, sites, areas, or objects for historic preservation  
29 purposes; or  
30 (6) payment of debt service on indebtedness issued or incurred by  
31 a county or municipality for any of the purposes set forth above.

32 The definition of recreation and conservation purposes in the bill  
33 includes both public outdoor recreation and public indoor recreation,  
34 in addition to various conservation purposes.

35 The bill includes a provision allowing voters to petition their  
36 governing bodies at the county or municipal level to place on the ballot  
37 a proposition like that authorized by the bill. At least 15% of the  
38 voters must sign such a petition to require the governing body to place  
39 the proposition on the ballot.

40 The bill also authorizes a county to distribute revenue it has raised  
41 from the annual levy to municipalities and qualifying charitable  
42 conservancies for the purposes set forth in the bill.

43 The bill establishes a mechanism by which propositions approved  
44 by county or municipal voters under the two current laws may be  
45 saved and revised to reflect the bill's provisions and purposes, without  
46 returning to the voters again, but only after at least one public hearing

1 has been held thereon.

2 Finally, the bill repeals the two current laws in favor of the system  
3 to be established by the bill.

4

5

6

7

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