

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 1000000**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 21, 1999

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1000000 (1R), with committee amendments.

Assembly Bill No. 1000000 (1R), as amended, establishes the "Garden State Preservation Trust Act," to provide a statutory framework for open space preservation, farmland preservation, recreation and park development, and historic preservation efforts in the State for at least the next decade.

In November 1998, the voters of the State approved a constitutional amendment dedicating \$98 million per year to those purposes and authorizing the issuance of up to \$1 billion in revenue bonds based upon the constitutionally dedicated funds. This bill establishes the "Garden State Preservation Trust" (GSPT) as the entity responsible for issuing those bonds, and prescribes procedures and funding allocations to guide the GSPT, the Department of Environmental Protection (DEP), the State Agricultural Development Committee (SADC), and the New Jersey Historic Trust (NJHT) in meeting those funding needs.

The GSPT will be composed of nine voting members, as follows: (1) the Commissioner of Environmental Protection, the Secretary of Agriculture, the Secretary of State, and the State Treasurer, all of whom would serve ex officio; and (2) one appointee by the Governor, two appointees (no more than one of whom could be from the same political party) by the President of the Senate, and two appointees (no more than one of whom could be from the same political party) by the Speaker of the General Assembly. The appointments of the Senate President and the Assembly Speaker will be made in compliance with the constitutional amendment's provision authorizing appointments to the GSPT by the Legislature. The terms of the appointees will be five years, except for the staggered terms of those first appointed. The chairperson will be elected annually and the chair will rotate annually among the three classes of appointees. The Governor's appointee will be the first chairperson of the trust. No person holding elective public

office will be eligible to be a member of the trust.

The bill provides that the GSPT shall not issue debt in any State fiscal year in excess of \$200 million, except that if that permitted amount of debt, or any portion thereof, is not issued in a State fiscal year it may be issued in a subsequent State fiscal year. This limitation can not be increased except by law. The constitutional amendment provides that the constitutionally dedicated moneys shall not be used to make payments related to bonds, notes or other obligations which in aggregate principal amount exceed \$1 billion plus costs of issuance. The bill includes a \$1 billion limit (plus costs of issuance) on the aggregate principal amount of bonds, notes or other obligations, including subordinated indebtedness, that may be issued by the GSPT.

Generally, the bill provides that in each State fiscal year over the next decade, the GSPT, after retaining sufficient funds to pay any debt service on its bonds and notes, will transfer \$6 million to the NJHT for historic preservation projects, and then divide the remaining proceeds as follows: 60% for the Green Acres program and 40% for the farmland preservation program. All administrative costs and expenses, including but not limited to salaries, fringe and other benefits, equipment, materials, direct and indirect costs, and non-salaried administrative costs, of the DEP, SADC, NJHT, and any other State entity incurred in connection with the implementation or administration of the constitutional amendment or the bill will be paid from the State General Fund, not from constitutionally dedicated moneys.

Of the moneys set aside each year for the Green Acres program, 50% will be allocated for open space acquisition and park development by the State, 40% for grants and low-interest (up to 2%) loans to local government units for open space acquisition and park development, and 10% for grants to nonprofit organizations for open space acquisition and park development. Loan repayments are specifically dedicated for future loans to local government units for open space acquisition or park development.

The GSPT will have the authority from year to year to alter the presumed funding allocation percentages and levels among and within the three programs as established in the bill and to transfer moneys between the programs for the purposes of responding to special needs or circumstances, but only after conducting at least one public hearing with at least 60 days advance public notice thereof.

Under the bill, proposed project funding lists will be submitted by the DEP and the SADC at least twice per year to the GSPT for its approval, and by the NJHT to the GSPT for its approval at least once per year or whenever deemed appropriate. Once approved, these lists will be forwarded to the Governor and the Legislature for approval in the form of appropriation bills. The GSPT could not add projects to these lists, but it could delete projects. A project deletion by the GSPT will trigger a review process by the GSPT involving the affected

parties. Upon completion of that review, if the DEP, SADC, or NJHT, as the case may be, decided that the project still warranted funding, the project will be placed again on a list to be considered by the Legislature for appropriation, and once on that list the project could not be deleted again by the GSPT. The opinions of the GSPT and the State agency concerning the merits and validity of any project subjected to this review process will be forwarded to the Legislature. The Legislature will retain its inherent power in all cases to accept or reject a project by choosing to include it in, or exclude it from, an appropriation bill. The bill provides that the total amount that may be appropriated for Green Acres and farmland preservation projects in any State fiscal year shall not exceed \$200 million.

For State fiscal year 2000 only, however, the bill allows for the approval of projects and the appropriation of moneys therefor through the annual appropriations act for that year.

The bill provides that to the extent the DEP receives a sufficient number of applications from local government units for the funding of qualified projects to acquire or develop, for recreation and conservation purposes, lands located in urban aid municipalities, in any State fiscal year the percentage of funding from the Garden State Green Acres Preservation Trust Fund for such projects recommended by the DEP shall be substantially equivalent to or greater than the percentage derived by dividing the total amount allocated pursuant to the last five Green Acres bond acts for local government unit projects for recreation and conservation purposes in urban aid municipalities by the total amount allocated pursuant to the last five Green Acres bond acts for all local government unit projects for recreation and conservation purposes. Also, in any State fiscal year, not less than 20% of the total amount of funding from the Garden State Green Acres Preservation Trust Fund for all State projects to acquire and develop lands for recreation and conservation purposes throughout the State recommended by the department shall be for State projects located in highly populated counties of the State with population densities of at least 1,000 persons per square mile according to the latest federal decennial census.

The bill creates the Office of Green Acres in the DEP. In addition to its other duties and responsibilities under the bill, the office will be responsible for establishing criteria for evaluating and ranking open space preservation projects for funding based upon guidelines in the bill, and will continue to administer the existing Green Acres bond act program and especially the existing Green Trust program for local government units. Projects funded with Green Trust moneys will also proceed through the GSPT approval process outlined above.

Under the bill, the GSPT will have certain reporting responsibilities with respect to financing plans, acquisition and development plans and progress, available surplus State property, and unfunded projects.

Generally, with respect to the Green Acres program, the standard

grant, if awarded, to a local government unit will be for 25% of open space acquisition costs, except the GSPT could raise that amount to 50% upon a showing of special need or exceptional circumstances. However, if a local government unit has enacted a dedicated local open space tax or similar stable source of local funding for open space preservation, the grant, if awarded, will be for 50% of acquisition costs, and the GSPT could raise that amount to 75% upon a special showing. A grant to a county or municipality for a project in an urban aid municipality will be for 50% of open space acquisition or park development costs, except that the GSPT could raise that amount to 75% upon a special showing. Finally, a grant to a nonprofit organization will be for up to 50% of open space acquisition or park development costs. Park development projects by a nonprofit organization on lands owned by a local government unit will require co-application or approval by the local government unit.

The bill will establish a sliding scale formula for payments in lieu of property taxes by the State for open space acquired and owned in fee simple by the State or nonprofit organizations. Initially, for such acquisitions pursuant to the bill, there will be a 13-year declining payment schedule similar to that used in past Green Acres bond acts. Thereafter, and for open space acquired prior to or after implementation of the bill using other funding sources and owned in fee simple by the State or nonprofit organizations, the payments in lieu of property taxes will be based upon the total amount of open space owned in fee simple by the State or nonprofit organizations in the municipality, using a sliding scale, as follows: \$2 per acre when the percentage of the total acreage in a municipality that is owned in fee simple by the State or nonprofit organizations for open space preservation purposes is less than 20%; \$5 per acre for 20% to less than 40% ownership; \$10 per acre for 40% to less than 60% ownership; and \$20 per acre for 60% or more ownership. These payments will be made from the State General Fund, not from constitutionally dedicated moneys.

The bill will exempt the State, local government units, and nonprofit organizations from the payment of any farmland assessment roll-back tax in connection with any acquisition of land for open space preservation purposes. Also, the bill prohibits the State from using eminent domain to acquire land for open space preservation except with the approval of the Legislature by adoption of a concurrent resolution to that effect. However, if needed, eminent domain proceedings could be employed by the State for the purpose only of establishing value.

The bill generally follows the laws and regulations for the existing Green Acres bond act program with respect to diversions of land acquired for open space preservation purposes to other uses, with certain exceptions.

With respect to farmland preservation, the SADC will pay for up

to 80% of the cost of acquisition by a local government unit of a development easement on farmland. The bill also will provide for payment by the SADC of up to 80% of the cost of acquisition by a local government unit of the fee simple title to farmland, which will be resold with an agricultural deed restriction placed upon the land. The SADC will provide grants for up to 50% of the cost of acquisition by a nonprofit organization of a development easement on farmland or the fee simple title to farmland, which will be resold or leased with an agricultural deed restriction as determined by the SADC. The current sliding scale formula for calculating the actual SADC share of the cost of an acquisition, as set forth in SADC regulations, will continue.

Under the bill, the SADC as well could acquire farmland development easements or fee simple titles to farmland.

The bill authorizes a special flexible approach to be used when appraising farmland to be preserved in the pinelands area under the farmland preservation program. The bill also provides for a similar flexible approach to be used when appraising lands in the pinelands area to be acquired for open space preservation purposes. In addition, the bill will require the permanent retirement of any pinelands development credits acquired in connection with either the open space or farmland preservation programs.

The bill provides that for State fiscal years 2000 through 2004 only, when the department, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire lands for open space or farmland preservation purposes using constitutionally dedicated moneys, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using the land use zoning of the lands (1) in effect at the time of proposed acquisition, and (2) in effect on November 3, 1998 as if that land use zoning is still in effect at the time of proposed acquisition. The higher of those two values will be utilized by the department, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner will be provided with both values determined pursuant to this provision. A landowner will be able to waive any of the requirements of this provision and may agree to sell the lands for less than the values so determined. Also, the bill provides for certain exceptions to the requirements of this provision.

The bill allocates \$6 million annually for historic preservation matching grants to local government units and nonprofit organizations, with a maximum grant amount of \$750,000 for any individual project. Also, unexpended historic preservation funds from past historic preservation grant awards due to project withdrawals, cancellations, or cost savings will be reallocated to historic preservation projects previously approved under the prior funding program. In addition, the bill authorizes two new alternatives (in addition to approval by

concurrent resolution of the Legislature) for legislative approval of historic preservation loans issued pursuant to a 1987 bond act program: (1) by legislative act in connection with appropriations made pursuant to this bill; or (2) by approval of the Joint Budget Oversight Committee. Finally, the bill will formalize by legislation the transfer, which was accomplished in 1998 by an executive reorganization plan, of the NJHT from in but not of the DEP to in but not of the Department of State, and make certain changes to the membership, powers, and operating procedures of the NJHT.

As amended and reported by this committee, this bill is identical to Senate Bill No. 9 (1R) of 1999.

**FISCAL IMPACT:**

The constitutional amendment establishes this funding source from State sales tax revenues by authorizing the dedication of \$98 million annually for ten years (through FY 2009); authorizing the sale of up to \$1 billion in revenue bonds; and dedicating up to \$98 million annually (from FY 2010 through FY 2029) to pay the debt service on such bonds. This bill creates the Garden State Preservation Trust (GSPT) as the entity responsible for issuing those bonds, and prescribes procedures and funding allocations to guide the GSPT, the Department of Environmental Protection (DEP), the State Agricultural Development Committee (SADC), and the New Jersey Historic Trust (NJHT) in meeting those funding needs. The GSPT is designated as an independent State agency located "in, but not of" the Department of the Treasury.

The bill provides that all administrative costs and expenses incurred by the GSPT, DEP, SADC, NJHT, or any other State entity in connection with the implementation or administration of the constitutional amendment or the bill will be paid from the General Fund. Under the bill, the GSPT would have certain reporting responsibilities with respect to financing plans, acquisition and development plans and progress, available surplus State property, and unfunded projects. It would be allowed to hire an executive director and staff with administrative expenses not exceeding \$150,000 annually. The GSPT would also be required to pay its five public board appointees \$150 per diem.

Initially under the bill State Aid support to municipalities for payment in lieu of taxes (PILOT) for open space acquired and owned in fee simple by the State or nonprofit organizations would be accomplished by a 13-year declining payment schedule similar to that used in past Green Acres bond acts. Thereafter, and for open space acquired prior to or after implementation of the bill using other funding sources and owned in fee simple by the State or nonprofit organizations, the payments in lieu of property taxes will be based upon the total amount of open space owned in fee simple by the State or nonprofit organizations in the municipality, using a sliding scale.

After the 13-year period payments will be based on holdings controlled by both the Division of Parks and Forestry and the Division of Fish, Game and Wildlife.

The Office of Legislative Services (OLS) has estimated that the State's administrative costs to implement the constitutional amendment under the bill in FY 2000 would be approximately \$8,142,000, based on the amounts contained in the Governor's FY 2000 Budget Recommendation. Future administrative costs are likely to rise as funding availability and acquisition activity under the Open Space initiative increases over the next ten years.

The OLS estimates that State Aid for PILOT payments under the bill will be \$4,520,000 in FY 2000, \$2,200,000 more than the current appropriation for this program, which is also included in the FY 2000 Budget Recommendation

The actual debt service costs for bonds issued will depend on market factors when the bonds are issued, or later if refinancing becomes an option.

#### COMMITTEE AMENDMENTS:

The amendments:

- (1) clarify the definition of "acquisition or acquire";
- (2) change the minimum rate that a county or municipality must meet for its dedicated open space tax or similar stable source of local funding for open space preservation to qualify the county or municipality for special funding considerations under the bill from 1/4 cent per \$100 of assessed value of real property to 1/2 cent per \$100 of assessed value of real property;
- (3) prohibit persons who hold elective public office from being members of the GSPT;
- (4) require that certain inspections be conducted and notices issued with respect to the possible existence of historic buildings or structures on certain lands acquired for recreation and conservation purposes;
- (5) authorize public access on lands donated by public utilities to the State for recreation and conservation purposes, unless the DEP determines such access would be detrimental to the lands or any natural resources associated therewith;
- (6) direct a study of the process by which easements are granted to public utilities on preserved lands and how that process might be improved;
- (7) clarify that the State-owned recreation and conservation lands for which payments in lieu of taxes are made are only those recreation and conservation lands administered by the DEP;
- (8) reduce the qualifying percentage, with respect to lands owned in a municipality by the State or a nonprofit organization for recreation and conservation purposes, for certain levels of payments in lieu of taxes made to municipalities from 50% to 40%;

(9) clarify that the current law and practice by which compensation is calculated when State recreation and conservation lands are diverted to other uses will continue to apply;

(10) change certain language in the bill concerning the "incurring" of debt to the "issuing" of debt;

(11) allow also, for State fiscal year 2000 only, the approval of certain projects and the appropriation of moneys therefor through the annual appropriations act for that year;

(12) prohibit local government units and nonprofit organizations from using constitutionally dedicated moneys to acquire lands that are already permanently preserved for recreation and conservation purposes (i.e., permanently preserved through ownership for such purposes by other local governmental units or nonprofit organizations);

(13) establish annual funding levels for local projects in urban aid municipalities and for State projects in highly populated counties for recreation and conservation purposes;

(14) require a biennial study comparing actual appropriations for open space projects in urban aid municipalities in future years to historical averages for such projects in the years 1984 through 1998;

(15) modify and clarify provisions in the bill pertaining to the valuation of lands under consideration for acquisition with regard to the current and previous land use zoning of those lands; and (16) make various clarifying and technical amendments.