

SENATE, No. 1454

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 6, 2008

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Imposes water consumption and diversion user fees to fund open space and farmland preservation projects.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning water supply protection and open space and
2 farmland preservation, amending and supplementing P.L.1999,
3 c.152, and supplementing Title 13 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) This act shall be known and may be cited as
9 the "Water Supply Open Space and Farmland Trust Fund Act."

10
11 2. (New section) The Legislature finds and declares that
12 enhancing the quality of life of the citizens of New Jersey is a
13 paramount policy of the State; that the acquisition and preservation
14 of open space and farmland in New Jersey protects its water
15 resources, protects and enhances the character and beauty of the
16 State, and provides its citizens with greater opportunities for
17 recreation, relaxation, and education; that the lands and resources
18 now dedicated to these purposes will not be adequate to meet the
19 needs of an expanding population in years to come; that the open
20 space and farmland that is available and appropriate for these
21 purposes will gradually disappear as the costs of preserving them
22 correspondingly increase; and that it is necessary and desirable to
23 provide funding for the development of parks and other open space
24 for recreation and conservation purposes.

25 The Legislature further finds and declares that agriculture plays
26 an integral role in the prosperity and well-being of the State as well
27 as providing a fresh and abundant supply of food for its citizens;
28 that much of the farmland in the State faces an imminent threat of
29 permanent conversion to non-farm uses; and that the retention and
30 development of an economically viable agricultural industry is of
31 high public priority.

32 The Legislature further finds and declares that there is growing
33 public recognition that the protection and preservation of New
34 Jersey's water resources, including the quality and quantity of the
35 State's limited water supply, is essential to the quality of life and the
36 economic health of the citizens of the State; that the quality of life,
37 economic prosperity, and environmental quality in New Jersey are
38 served by the protection and timely preservation of open space and
39 farmland and better management of the lands, resources, and
40 recreational facilities that are already under public ownership or
41 protection; that the acquisition of flood-prone areas is in the best
42 interests of the State to prevent the loss of life and property; and
43 that the preservation of the existing diversity of animal and plant
44 species is essential to sustaining both the environment and the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 economy of the Garden State, and the conservation of adequate
2 habitat for endangered, threatened, and other rare species is
3 necessary to preserve this biodiversity.

4 The Legislature further finds and declares that the citizens of the
5 State have indicated their very strong support for water quality
6 protection, and open space, and farmland preservation efforts not
7 only in the past approval of State Green Acres bond acts and
8 numerous county and municipal dedicated funding sources for those
9 purposes, but with the approval of an amendment to the New Jersey
10 Constitution that provided for a stable and dedicated source of
11 funding for those purposes for the past decade.

12 The Legislature therefore determines that it is in the public
13 interest to establish a new stable source of funding, based on
14 surcharges on water consumption and water diversion, for the
15 State's open space and farmland programs.

16

17 3. (New section) As used in sections 1 through 8 of this act:

18 "Acquisition" means the obtaining of a fee simple or lesser
19 interest in land, including but not limited to a development
20 easement, a conservation restriction or easement, or any other
21 restriction or easement permanently restricting development, by
22 purchase, installment purchase agreement, gift, donation, eminent
23 domain by the State or a local government unit, or device.

24 "Consumptive use" means any use of water diverted from surface
25 or ground waters other than a nonconsumptive use as defined in this
26 act.

27 "Department" means the Department of Environmental
28 Protection.

29 "Development" or "develop" means, except as used in the
30 definitions of "acquisition" and "development easement" in this
31 section, any improvement made to a land or water area designed to
32 expand and enhance its utilization for recreation and conservation
33 purposes, and shall include the construction, renovation, or repair of
34 any such improvement, but shall not mean shore protection or beach
35 nourishment or replenishment activities.

36 "Development easement" means an interest in land, less than fee
37 simple title thereto, which interest represents the right to develop
38 that land for all nonagricultural purposes and which interest may be
39 transferred under laws authorizing the transfer of development
40 potential.

41 "Diversion" or "divert" means the taking or impoundment of
42 water from a river, stream, lake, pond, aquifer, well, other
43 underground source, or other water body, whether or not the water
44 is returned thereto, consumed, made to flow into another stream or
45 basin, or discharged elsewhere.

46 "Farmland" means land identified as having prime or unique
47 soils as classified by the Natural Resources Conservation Service in
48 the United States Department of Agriculture, having soils of

1 Statewide importance according to criteria adopted by the State Soil
2 Conservation Committee, established pursuant to R.S.4:24-3, or
3 having soils of local importance as identified by local soil
4 conservation districts, and which land qualifies for differential
5 property taxation pursuant to the "Farmland Assessment Act of
6 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), and any other land on
7 the farm that is necessary to accommodate farm practices as
8 determined by the State Agriculture Development Committee.

9 "Farmland preservation" means the permanent preservation of
10 farmland to support agricultural or horticultural production as the
11 first priority use of that land.

12 "Fund" means the Water Supply Open Space and Farmland Trust
13 Fund Account established pursuant to section 4 of this act.

14 "Garden State Farmland Preservation Trust Fund" means the
15 fund created pursuant to section 20 of P.L.1999, c.152 (C.13:8C-
16 20).

17 "Garden State Green Acres Preservation Trust Fund" means the
18 fund created pursuant to section 19 of P.L.1999, c.152 (C.13:8C-
19 19).

20 "Local government unit" means a county, municipality, or other
21 political subdivision of the State, or any agency, authority, or other
22 entity thereof; except, with respect to the acquisition and
23 development of lands for recreation and conservation purposes,
24 "local government unit" means a county, municipality, or other
25 political subdivision of the State, or any agency, authority, or other
26 entity thereof the primary purpose of which is to administer,
27 protect, acquire, develop, or maintain lands for recreation and
28 conservation purposes.

29 "Nonconsumptive use" means the use of water diverted from
30 surface or ground waters in such a manner that it is returned to the
31 surface or ground water at or near the point from which it was taken
32 without substantial diminution in quantity or substantial impairment
33 of quality.

34 "Person" means any individual, corporation, company,
35 partnership, firm, association, owner or operator of a public water
36 system, political subdivision of the State and any state, or interstate
37 agency or Federal agency.

38 "Public community water system" means a public water system
39 which serves at least 15 service connections used by year-round
40 residents or regularly serves at least 25 year-round residents.

41 "Public water system" means a system for the provision to the
42 public of water for human consumption through pipes or other
43 constructed conveyances, if such system has at least 15 service
44 connections or regularly serves an average of at least 25 individuals
45 daily at least 60 days out of the year. Such term includes: (1) any
46 collection, treatment, storage and distribution facilities under
47 control of the operator of such system and used primarily in
48 connection with such system; and (2) any collection or

1 pre-treatment storage facilities not under such control which are
2 used primarily in connection with such system.

3 "Recreation and conservation purposes" means the use of lands
4 for beaches, biological or ecological study, boating, camping,
5 fishing, forests, greenways, hunting, natural areas, parks,
6 playgrounds, protecting historic properties, water reserves,
7 watershed protection, wildlife preserves, active sports, or a similar
8 use for either public outdoor recreation or conservation of natural
9 resources, or both.

10 "Small water company" means any company, purveyor or entity,
11 other than a governmental agency, that provides water for human
12 consumption and which regularly serves less than 1,000 customer
13 connections, including nonprofit, noncommunity water systems
14 owned or operated by a nonprofit group or organization.

15 "Unaccounted-for water" means water withdrawn by a local
16 government unit or water purveyor from a source and not accounted
17 for as being delivered to customers in measured amounts.

18 "Water purveyor" means any investor-owned water company or
19 small water company that owns or operates a public water system.

20

21 4. (New section) a. There is established in the General Fund a
22 special account, to be known as the "Water Supply Open Space and
23 Farmland Trust Fund Account." The State Treasurer shall credit to
24 this account the amount from the State revenue annually collected
25 from the fees imposed pursuant to sections 5 and 6 of this act and
26 dedicated pursuant to Article VIII, Section II, paragraph 8 of the
27 State Constitution (pending before the Legislature as Senate
28 Concurrent Resolution No.88 of 2008 or Assembly Concurrent
29 Resolution No. of 2008).

30 b. In each State fiscal year, the amount credited to the Water
31 Supply Open Space and Farmland Trust Fund Account shall be
32 appropriated only for the purposes set forth in Article VIII, Section
33 II, paragraph 8 of the State Constitution (pending before the
34 Legislature as Senate Concurrent Resolution No.88 of 2008 or
35 Assembly Concurrent Resolution No. of 2008) and this act.

36 c. In each State fiscal year, the State Treasurer shall transfer for
37 deposit into the Garden State Green Acres Preservation Trust Fund,
38 65% of the amount that is available from the Water Supply Open
39 Space and Farmland Trust Fund Account plus any interest or other
40 income earned on that amount prior to transfer pursuant to this
41 subsection and appropriation pursuant to subsection b. of this
42 section.

43 d. In each State fiscal year, the State Treasurer shall transfer for
44 deposit into the Garden State Farmland Preservation Trust Fund
45 35% of the amount as are available from the Water Supply Open
46 Space and Farmland Trust Fund Account plus any interest or other
47 income earned on that amount prior to transfer pursuant to this

1 subsection and appropriation pursuant to subsection b. of this
2 section.

3 e. (1) Of the amount deposited each State fiscal year into the
4 Garden State Green Acres Preservation Trust Fund pursuant to
5 subsection c. of this section: 50% thereof shall be allocated for the
6 purposes of paying the cost of acquisition and development of lands
7 by the State for recreation and conservation purposes; 40% thereof
8 shall be allocated for the purposes of providing grants and loans to
9 assist local government units to pay the cost of acquisition and
10 development of lands for recreation and conservation purposes; and
11 10% thereof shall be allocated for the purposes of providing grants
12 to assist qualifying tax exempt nonprofit organizations to pay the
13 cost of acquisition and development of lands for recreation and
14 conservation purposes, all as provided pursuant to P.L.1999, c.152
15 (C.13:8C-1 et seq.).

16 (2) Notwithstanding the provisions of this subsection to the
17 contrary, any repayments of the principal and interest on loans
18 issued to local government units for the acquisition or development
19 of lands for recreation and conservation purposes, shall be allocated
20 only for the issuance of additional loans to local government units
21 for the acquisition or development of lands for recreation and
22 conservation purposes.

23

24 5. (New section) a. There is imposed upon the owner or
25 operator of every public community water system a water
26 consumption user fee of \$0.40 per thousand gallons of water
27 delivered to a consumer, not including water delivered for resale.

28 b. (1) Every person subject to the water consumption user fee
29 shall, on the effective date of this section, and quarterly thereafter,
30 render a return under oath to the Director of the Division of
31 Taxation in the Department of the Treasury, on such forms as may
32 be prescribed by the director, indicating the number of gallons of
33 water delivered to a consumer, and at that time shall pay the full
34 amount due. The amount due from any person subject to the water
35 consumption user fee shall not exceed \$50,000 per annum. The
36 director may prescribe a consolidated form for reporting the amount
37 due under the water consumption user fee imposed by this section
38 and the tax imposed under section 11 of P.L.1983, c.443
39 (C.58:12A-21).

40 (2) Every person subject to the water consumption user fee shall,
41 within 30 days after the date of enactment of this act, register with
42 the director on forms prescribed by the director.

43 c. If a return required by this section is not filed, or if a return
44 when filed is incorrect or insufficient in the opinion of the director,
45 the amount due shall be determined by the director from such
46 information as may be available. Notice of the determination shall
47 be given to the person subject to the water consumption user fee.
48 The determination shall finally and irrevocably fix the amount due,

1 unless the person on whom it is imposed, within 90 days after the
2 giving of the notice of the determination, shall file a protest in
3 writing as provided in R.S.54:49-18 and request a hearing, or unless
4 the director on the director's own motion shall redetermine the
5 same. After the hearing the director shall give notice of the
6 determination to the person on whom the water consumption user
7 fee is imposed.

8 d. Any person subject to the water consumption user fee who
9 fails to file a return when due or to pay any surcharge when it
10 becomes due, as herein provided, shall be subject to such penalties
11 and interest as provided in the "State Uniform Tax Procedure Law,"
12 R.S.54:48-1 et seq. If the director determines that the failure to
13 comply with any provision of this section was excusable under the
14 circumstances, the director may remit that part or all of the penalty
15 as shall be appropriate under the circumstances.

16 e. The director shall deposit all revenues collected pursuant to
17 this section in the Water Supply Open Space and Farmland Trust
18 Fund Account created pursuant to section 4 of this act.

19 f. In addition to the other powers granted to the director in this
20 section, the director is authorized:

21 (1) To delegate to any officer or employee of the division those
22 powers and duties as the director deems necessary to carry out
23 efficiently the provisions of this section, and the person to whom
24 the power has been delegated shall possess and may exercise all of
25 these powers and perform all of the duties delegated by the director;
26 and

27 (2) To prescribe and distribute all necessary forms for the
28 implementation of this section.

29 g. Any person subject to the water consumption user fee who is
30 subject to the jurisdiction or rate regulation of the Board of Public
31 Utilities as a public utility shall collect the water consumption user
32 fee imposed by this section by imposing an automatic surcharge on
33 any tariff established pursuant to law for water rates and charges.
34 The Board of Public Utilities shall issue an appropriate order
35 adjusting the tariffs established pursuant to law to reflect these
36 payments. In issuing any order required by this subsection, the
37 Board of Public Utilities shall be exempt from the provisions of
38 R.S.48:2-21.

39 h. Any person subject to the water consumption user fee may
40 collect the water consumption user fee imposed by this section by
41 including the amount of user fee due as a separate line item on
42 every customer bill or other statement presented to consumers. The
43 person subject to the water consumption user fee may use up to 1%
44 of all user fee revenues collected to defray the costs of
45 administration and collection of the water consumption user fee.
46 The director shall credit the proper amount to the person subject to
47 the water consumption user fee upon receipt of written

1 documentation of the actual costs expended for the collection of the
2 water consumption user fee.

3 i. The water consumption user fee imposed by this section shall
4 be governed in all respects by the provisions of the "State Uniform
5 Tax Procedure Law," R.S.54:48-1 et seq., except only to the extent
6 that a specific provision of this section may be in conflict therewith.

7 j. The water consumption user fee imposed by this section shall
8 be collected in the same manner as the tax imposed under section 11
9 of P.L.1983, c.443 (C.58:12A-21).

10 k. The water consumption user fee imposed by this section shall
11 not be imposed on:

12 (1) water delivered to a consumer for the purpose of storage for
13 future water supplies;

14 (2) water delivered to a consumer for the purpose of transferring
15 water between public water systems;

16 (3) water delivered to a consumer for emergency purposes,
17 including fire fighting, flood prevention, response to a discharge of
18 hazardous substances, or for other emergency purposes as may be
19 determined by the department;

20 (4) water delivered to a consumer, including water delivered for
21 resale, or a bulk sale of water delivered to a consumer in another
22 public water system; or

23 (5) unaccounted-for water of 15% or less. In the case of
24 unaccounted-for water greater than 15%, the local government unit
25 or water purveyor may petition the department for an increase in the
26 percentage of unaccounted-for water eligible for an exemption
27 pursuant to this subsection. The allowable increase in the
28 percentage of unaccounted-for water shall be determined by the
29 department based on a finding of fact that the leakage reported to
30 the department is not the result of a critically needed water supply
31 infrastructure project.

32 l. The water consumption user fee imposed by this section shall
33 not be imposed on water delivered to a consumer for purposes of
34 reducing air emissions or water pollutants necessary for compliance
35 with local, State or federal regulations or for water derived from
36 reuse of effluent from a primary wastewater treatment system,
37 which effluent would otherwise have been discharged into the
38 waters of the State.

39 (1) Any person claiming a complete or partial exemption from
40 the water consumption user fee pursuant to this subsection shall
41 annually file with the director a written certification indicating the
42 percentage and number of gallons of water delivered to a consumer
43 for which the exemption is claimed. The director, in consultation
44 with the department, may conduct an audit of the certification. Any
45 person who files a false certification shall be subject to such
46 penalties and interest as provided in the "State Uniform Tax
47 Procedure Law," R.S.54:48-1 et seq.

1 (2) The director shall authorize a refund to any person claiming a
2 complete or partial exemption from the water consumption user fee
3 who has met the requirements of this subsection. The refund shall
4 be in the amount of the percentage of the water annually delivered
5 to a consumer for which the exemption is claimed multiplied by the
6 person's total annual water consumption user fee liability.

7
8 6. (New section) a. There is imposed upon every person
9 required to obtain a diversion permit issued by the department
10 pursuant to the provisions of sections 6 and 7 of P.L.1981, c.262
11 (C.58:1A-6 and 58:1A-7), including any person who is required to
12 apply for and obtain a water use registration pursuant to rules and
13 regulations adopted by the department to administer and enforce the
14 provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993,
15 c.202 (C.58:1A-7.3 et al.), a water diversion user fee. The water
16 diversion user fee shall be levied at the rate of \$0.40 per thousand
17 gallons of water diverted for a consumptive use.

18 b. (1) Every person subject to the water diversion user fee shall,
19 on the effective date of this section, and quarterly thereafter, render
20 a return under oath to the Director of the Division of Taxation in the
21 Department of the Treasury, on such forms as may be prescribed by
22 the director, indicating the number of gallons of water diverted, and
23 at that time shall pay the full amount due. The amount due from
24 any person subject to the water diversion user fee shall not exceed
25 \$50,000 per annum.

26 (2) Every person subject to the water diversion user fee shall,
27 within 30 days after the date of enactment of this act, register with
28 the director on forms prescribed by the director.

29 c. (1) If a return required by this section is not filed, or if a
30 return when filed is incorrect or insufficient in the opinion of the
31 director, the amount due shall be determined by the director from
32 such information as may be available. Notice of the determination
33 shall be given to the person subject to the water diversion user fee.
34 The determination shall finally and irrevocably fix the amount due,
35 unless the person on whom it is imposed, within 90 days after the
36 giving of the notice of the determination, shall file a protest in
37 writing as provided in R.S.54:49-18 and request a hearing, or unless
38 the director on the director's own motion shall redetermine the
39 same. After the hearing the director shall give notice of the
40 determination to the person on whom the water diversion user fee is
41 imposed.

42 (2) Any person subject to the water diversion user fee who fails
43 to file a return when due or to pay any fee when it becomes due, as
44 herein provided, shall be subject to such penalties and interest as
45 provided in the "State Uniform Tax Procedure Law," R.S.54:48-1 et
46 seq. If the director determines that the failure to comply with any
47 provision of this section was excusable under the circumstances, the

1 director may remit that part or all of the penalty as shall be
2 appropriate under the circumstances.

3 d. (1) Any person subject to the water diversion user fee who is
4 subject to the jurisdiction or rate regulation of the Board of Public
5 Utilities as a public utility shall collect the water diversion user fee
6 imposed by this section by imposing an automatic fee on any tariff
7 established pursuant to law for water rates and charges. The Board
8 of Public Utilities shall issue an appropriate order adjusting the
9 tariffs established pursuant to law to reflect these payments. In
10 issuing any order required by this subsection, the Board of Public
11 Utilities shall be exempt from the provisions of R.S.48:2-21.

12 (2) Any person subject to the water diversion user fee may
13 collect the water diversion user fee imposed by this section by
14 including the amount of user fee due as a separate line item on
15 every customer bill or other statement presented to consumers. The
16 person subject to the water diversion user fee may use up to 1% of
17 all revenues collected to defray the costs of administration and
18 collection of the water diversion user fee. The director shall credit
19 the proper amount to the person subject to the water diversion user
20 fee upon receipt of written documentation of the actual costs
21 expended for the collection of the water diversion user fee.

22 e. The director shall deposit all user fee revenues collected
23 pursuant to this section in the Water Supply Open Space and
24 Farmland Trust Fund Account created pursuant to section 4 of this
25 act.

26 f. In addition to the other powers granted to the director in this
27 section, the director is authorized:

28 (1) To delegate to any officer or employee of the division those
29 powers and duties as the director deems necessary to carry out
30 efficiently the provisions of this section, and the person to whom
31 the power has been delegated shall possess and may exercise all of
32 these powers and perform all of the duties delegated by the director;
33 and

34 (2) To prescribe and distribute all necessary forms for the
35 implementation of this section.

36 g. The water diversion user fee imposed by this section shall be
37 governed in all respects by the provisions of the "State Uniform Tax
38 Procedure Law," R.S.54:48-1 et seq., except only to the extent that
39 a specific provision of this section may be in conflict therewith.

40 h. The water diversion user fee imposed by this section shall not
41 be imposed on:

42 (1) water diverted for agricultural or horticultural purposes under
43 a water usage certification required pursuant to the provisions of
44 section 6 of P.L.1981, c.262 (C.58:1A-6) or as provided in section 2
45 of P.L.1981, c.277 (C.58:1A-7.2);

46 (2) water diverted for a nonconsumptive use. In the case of
47 those permittees or persons with diversion privileges to divert water
48 for both a consumptive use and a nonconsumptive use, the

1 calculation of the amount of water diverted for nonconsumptive use
2 shall be determined by the department based on water use as
3 reported to the department pursuant to P.L.1981, c.262 (C.58:1A-1
4 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), or if not reported,
5 based on standard industry water use profiles;

6 (3) surface water diverted by permittees or persons required to
7 apply for and obtain a water use registration in such a manner that it
8 is returned to another surface water body;

9 (4) water diverted for the remediation of areas with contaminated
10 ground water supplies, or for other remedial actions as provided by
11 law;

12 (5) water diverted for emergency purposes, including fire
13 fighting, flood prevention, response to a discharge of hazardous
14 substances, or for other emergency purposes as may be determined
15 by the department;

16 (6) diversions of salt water except whenever the department
17 determines that the diversion and resultant usage may affect
18 utilization of fresh water;

19 (7) water diverted for a paper manufacturing process utilizing
20 post-consumer waste material in the manufacture of a recycled
21 product which constitutes at least 75% of total annual sales dollar
22 volume of the products manufactured in this State by that
23 manufacturer as determined by the director;

24 (8) water subject to the water consumption user fee imposed by
25 section 5 of this act;

26 (9) diversions of saline water except whenever the department
27 determines that the diversion and resultant usage may affect
28 utilization of fresh water;

29 (10) water diverted for purposes of reducing air emissions or
30 water pollutants necessary for compliance with local, State or
31 federal regulations;

32 (11) water diverted for the purpose of transferring water between
33 public water systems; or

34 (12) water diverted for resale, or a bulk sale of water diverted to
35 another public water system.

36 For the purposes of this subsection, "post-consumer waste
37 material" means a material or product that would otherwise become
38 solid waste, having completed its intended end use and product life
39 cycle, except that "post-consumer waste material" shall not include
40 secondary waste material or materials and by-products generated
41 from, and commonly used within, an original manufacturing and
42 fabrication process; "recycled product" means any product or
43 commodity which is manufactured or produced in whole or in part
44 from post-consumer waste material and which meets the recycled
45 content standard of the United States Environmental Protection
46 Agency as published in the Comprehensive Procurement Guidelines
47 for Products Containing Recovered Material; "secondary waste
48 material" means waste material generated after the completion of a

1 manufacturing process; "solid waste" means the same as that term is
2 defined in section 3 of P.L.1970, c.39 (C.13:1E-3); and "saline
3 water" means water containing a chloride concentration in excess of
4 250 mg/L; and "salt water" means water containing a chloride
5 concentration in excess of 10,000 mg/L.

6 i. Any person subject to the water diversion user fee shall be
7 eligible for water conservation credits against the water diversion
8 user fee. Water conservation credits shall be granted to any
9 permittee or person required to apply for and obtain a water use
10 registration who can demonstrate a net reduction in annual water
11 use over any 10-year period commencing January 1, 2008. The
12 water conservation credits shall be equal to 50% of the difference
13 between the maximum year withdrawal during this period and the
14 current year, where the reduction can be documented as attributable
15 to water conservation. The department shall approve the diversion
16 permit or water use registration modification to reflect the water
17 conservation credits granted.

18

19 7. (New section) Notwithstanding the provisions of any other
20 law, or rule or regulation adopted pursuant thereto, to the contrary,
21 the moneys credited to the Water Supply Open Space and Farmland
22 Trust Fund Account created pursuant to section 4 of P.L. , c.
23 (C.) (pending before the Legislature as this bill) and appropriated
24 to the Garden State Green Acres Preservation Trust Fund and the
25 Garden State Farmland Preservation Trust Fund shall not be used
26 for payments related to bonds, notes or other obligations.

27

28 8. (New section) a. The department shall adopt, pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), rules and regulations as are necessary to effectuate the
31 purposes of this act.

32 b. The Director of the Division of Taxation, in consultation with
33 the department and pursuant to the "Administrative Procedure Act,"
34 shall adopt rules and regulations as are necessary to effectuate the
35 provisions of sections 5 and 6 of this act.

36

37 9. Section 3 of P.L.1999, c.152 (C.13:8C-3) is amended to read
38 as follows:

39 3. As used in sections 1 through 42 of this act:

40 "Acquisition" or "acquire" means the obtaining of a fee simple or
41 lesser interest in land, including but not limited to a development
42 easement, a conservation restriction or easement, or any other
43 restriction or easement permanently restricting development, by
44 purchase, installment purchase agreement, gift, donation, eminent
45 domain by the State or a local government unit, or devise; except
46 that any acquisition of lands by the State for recreation and
47 conservation purposes by eminent domain shall be only as
48 authorized pursuant to section 28 of this act;

1 "Bonds" means bonds issued by the trust pursuant to this act;

2 "Commissioner" means the Commissioner of Environmental
3 Protection;

4 "Committee" means the State Agriculture Development
5 Committee established pursuant to section 4 of P.L.1983, c.31
6 (C.4:1C-4);

7 "Constitutionally dedicated moneys" means any moneys made
8 available pursuant to Article VIII, Section II, paragraph 7 of the
9 State Constitution or through the issuance of bonds, notes or other
10 obligations by the trust, as prescribed by Article VIII, Section II,
11 paragraph 7 of the State Constitution and this act, [or] any moneys
12 from other sources deposited in the trust funds established pursuant
13 to sections 19, 20, and 21 of this act, and appropriated by law, for
14 any of the purposes set forth in Article VIII, Section II, paragraph 7
15 of the State Constitution or this act , or any moneys made available
16 pursuant to Article VIII, Section II, paragraph 8 of the State
17 Constitution (pending before the Legislature as Senate Concurrent
18 Resolution No.88 of 2008 or Assembly Concurrent Resolution No.
19 of 2008) and appropriated by law and deposited in the trust funds
20 pursuant to section 4 of P.L. , c. (C.) (pending before the
21 Legislature as this bill), for the purposes set forth in Article VIII,
22 Section II, paragraph 8 of the State Constitution (pending before the
23 Legislature as Senate Concurrent Resolution No.88 of 2008 or
24 Assembly Concurrent Resolution No. of 2008) ;

25 "Convey" or "conveyance" means to sell, donate, exchange,
26 transfer, or lease for a term of 25 years or more;

27 "Cost" means the expenses incurred in connection with: all
28 things deemed necessary or useful and convenient for the
29 acquisition or development of lands for recreation and conservation
30 purposes, the acquisition of development easements or fee simple
31 titles to farmland, or the preservation of historic properties, as the
32 case may be; the execution of any agreements or franchises deemed
33 by the Department of Environmental Protection, State Agriculture
34 Development Committee, or New Jersey Historic Trust, as the case
35 may be, to be necessary or useful and convenient in connection with
36 any project funded in whole or in part using constitutionally
37 dedicated moneys; the procurement or provision of appraisal,
38 archaeological, architectural, conservation, design, engineering,
39 financial, geological, historic research, hydrological, inspection,
40 legal, planning, relocation, surveying, or other professional advice,
41 estimates, reports, services, or studies; the purchase of title
42 insurance; the undertaking of feasibility studies; the establishment
43 of a reserve fund or funds for working capital, operating,
44 maintenance, or replacement expenses and for the payment or
45 security of principal or interest on bonds, as the Director of the
46 Division of Budget and Accounting in the Department of the
47 Treasury may determine; and reimbursement to any fund of the
48 State of moneys that may have been transferred or advanced

1 therefrom to any fund established by this act, or any moneys that
2 may have been expended therefrom for, or in connection with, this
3 act;

4 "Department" means the Department of Environmental
5 Protection;

6 "Development" or "develop" means, except as used in the
7 definitions of "acquisition" and "development easement" in this
8 section, any improvement made to a land or water area designed to
9 expand and enhance its utilization for recreation and conservation
10 purposes, and shall include the construction, renovation, or repair of
11 any such improvement, but shall not mean shore protection or beach
12 nourishment or replenishment activities;

13 "Development easement" means an interest in land, less than fee
14 simple title thereto, which interest represents the right to develop
15 that land for all nonagricultural purposes and which interest may be
16 transferred under laws authorizing the transfer of development
17 potential;

18 "Farmland" means land identified as having prime or unique
19 soils as classified by the Natural Resources Conservation Service in
20 the United States Department of Agriculture, having soils of
21 Statewide importance according to criteria adopted by the State Soil
22 Conservation Committee, established pursuant to R.S.4:24-3, or
23 having soils of local importance as identified by local soil
24 conservation districts, and which land qualifies for differential
25 property taxation pursuant to the "Farmland Assessment Act of
26 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), and any other land on
27 the farm that is necessary to accommodate farm practices as
28 determined by the State Agriculture Development Committee;

29 "Farmland preservation," "farmland preservation purposes" or
30 "preservation of farmland" means the permanent preservation of
31 farmland to support agricultural or horticultural production as the
32 first priority use of that land;

33 "Garden State Farmland Preservation Trust Fund" means the
34 Garden State Farmland Preservation Trust Fund established
35 pursuant to section 20 of this act;

36 "Garden State Green Acres Preservation Trust Fund" means the
37 Garden State Green Acres Preservation Trust Fund established
38 pursuant to section 19 of this act;

39 "Garden State Historic Preservation Trust Fund" means the
40 Garden State Historic Preservation Trust Fund established pursuant
41 to section 21 of this act;

42 "Green Acres bond act" means: P.L.1961, c.46; P.L.1971, c.165;
43 P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265;
44 P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; and any State
45 general obligation bond act that may be approved after the date of
46 enactment of this act for the purpose of providing funding for the
47 acquisition or development of lands for recreation and conservation
48 purposes;

1 "Historic preservation," "historic preservation purposes," or
2 "preservation of historic properties" means any work relating to the
3 conservation, improvement, interpretation, preservation, protection,
4 rehabilitation, renovation, repair, restoration, or stabilization of any
5 historic property, and shall include any work related to providing
6 access thereto for disabled or handicapped persons;

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

11 "Indoor recreation" means active recreation that otherwise is or
12 may be pursued outdoors but, for reasons of extending the season or
13 avoiding inclement weather, is or may be pursued indoors within a
14 fully or partially enclosed building or other structure, and includes
15 basketball, ice skating, racquet sports, roller skating, swimming,
16 and similar recreational activities and sports as determined by the
17 Department of Environmental Protection;

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

22 "Local government unit" means a county, municipality, or other
23 political subdivision of the State, or any agency, authority, or other
24 entity thereof; except, with respect to the acquisition and
25 development of lands for recreation and conservation purposes,
26 "local government unit" means a county, municipality, or other
27 political subdivision of the State, or any agency, authority, or other
28 entity thereof the primary purpose of which is to administer,
29 protect, acquire, develop, or maintain lands for recreation and
30 conservation purposes;

31 "New Jersey Historic Trust" means the entity established
32 pursuant to section 4 of P.L.1967, c.124 (C.13:1B-15.111);

33 "Notes" means the notes issued by the trust pursuant to this act;

34 "Permitted investments" means any of the following securities;

35 (1) Bonds, debentures, notes or other evidences of indebtedness
36 issued by any agency or instrumentality of the United States to the
37 extent such obligations are guaranteed by the United States or by
38 another such agency the obligations (including guarantees) of which
39 are guaranteed by the United States;

40 (2) Bonds, debentures, notes or other evidences of indebtedness
41 issued by any corporation chartered by the United States, including,
42 but not limited to, Governmental National Mortgage Association,
43 Federal Land Banks, Federal Home Loan Mortgage Corporation,
44 Federal National Mortgage Association, Federal Home Loan Banks,
45 Federal Intermediate Credit Banks, Banks for Cooperatives,
46 Tennessee Valley Authority, United States Postal Service, Farmers
47 Home Administration, Resolution Funding Corporation, Export-

1 Import Bank, Federal Financing Bank and Student Loan Marketing
2 Association;

3 (3) Bonds, debentures, notes or commercial paper rated in the
4 highest two rating categories without regard to rating subcategories
5 (derogation) by all nationally recognized investment rating agencies
6 or by a nationally recognized investment rating agency if rated by
7 only one nationally recognized investment rating agency;

8 (4) Repurchase agreements or investment agreements issued by
9 (i) a commercial bank or trust company or a national banking
10 association, each having a capital stock and surplus of more than
11 \$100,000,000, or (ii) an insurance company with the highest rating
12 provided by a nationally recognized insurance company rating
13 agency, or (iii) a broker/dealer, or (iv) a corporation; provided that
14 the credit of such commercial bank or trust company or national
15 banking association or insurance company or broker/dealer or
16 corporation, as the case may be, is rated (or, in the case of a
17 broker/dealer or corporation, whose obligations thereunder are
18 guaranteed by a commercial bank or trust company or a national
19 banking association or insurance company with the highest rating
20 provided by a nationally recognized insurance company rating
21 agency or corporation whose credit is rated) not lower than the
22 "AA" category without regard to rating subcategories (derogation)
23 of any two nationally recognized investment rating agencies then
24 rating the State; provided that any such agreement shall provide for
25 the investment of funds and shall be collateralized by obligations
26 described in paragraph 1 or paragraph 2 or paragraph 3 above at a
27 level of at least one hundred and two (102) percent in principal
28 amount of those obligations;

29 "Pinelands area" means the pinelands area as defined pursuant to
30 section 3 of P.L.1979, c.111 (C.13:18A-3);

31 "Pinelands regional growth area" means a regional growth area
32 established pursuant to the pinelands comprehensive management
33 plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);

34 "Project" means all things deemed necessary or useful and
35 convenient in connection with the acquisition or development of
36 lands for recreation and conservation purposes, the acquisition of
37 development easements or fee simple titles to farmland, or the
38 preservation of historic properties, as the case may be;

39 "Qualifying open space referendum county" means any county
40 that has: (1) approved and implemented, and is collecting and
41 expending the revenue from, an annual levy authorized pursuant to
42 P.L.1997, c.24 (C.40:12-15.1 et seq.) for an amount or at a rate
43 equivalent to at least one half of one cent per \$100 of assessed
44 value of real property, or for an amount or at a rate established by
45 the county and in effect as of April 1, 1999, whichever is greater; or
46 (2) adopted an alternative means of funding for the same or similar
47 purposes as an annual levy, which the Department of Environmental
48 Protection, in consultation with the committee and the New Jersey

1 Historic Trust, approves to be stable and reasonably equivalent in
2 effect to an annual levy;

3 "Qualifying open space referendum municipality" means any
4 municipality that has: (1) approved and implemented, and is
5 collecting and expending the revenue from, an annual levy
6 authorized pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) for an
7 amount or at a rate equivalent to at least one half of one cent per
8 \$100 of assessed value of real property, or for an amount or at a rate
9 established by the municipality and in effect as of April 1, 1999,
10 whichever is greater; or (2) adopted an alternative means of funding
11 for the same or similar purposes as an annual levy, which the
12 Department of Environmental Protection, in consultation with the
13 committee and the New Jersey Historic Trust, approves to be stable
14 and reasonably equivalent in effect to an annual levy;

15 "Qualifying tax exempt nonprofit organization" means a
16 nonprofit organization that is exempt from federal taxation pursuant
17 to section 501 (c)(3) of the federal Internal Revenue Code, 26
18 U.S.C. s.501 (c)(3), and which qualifies for a grant pursuant to
19 section 27, 39, or 41 of this act;

20 "Recreation and conservation purposes" means the use of lands
21 for beaches, biological or ecological study, boating, camping,
22 fishing, forests, greenways, hunting, natural areas, parks,
23 playgrounds, protecting historic properties, water reserves,
24 watershed protection, wildlife preserves, active sports, or a similar
25 use for either public outdoor recreation or conservation of natural
26 resources, or both; and

27 "Trust" means the Garden State Preservation Trust established
28 pursuant to section 4 of this act.
29 (cf: P.L. 2005, c.281, s.1)

30

31 10. This act shall take effect upon the date of approval of the
32 voters of a constitutional amendment as proposed pursuant to
33 Senate Concurrent Resolution No.88 of 2008 or Assembly
34 Concurrent Resolution No. of 2008, except that sections 5 and 6
35 of this act shall take effect on the first day of the third full fiscal
36 quarter following the date on which the remainder of this act takes
37 effect.

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39

40

STATEMENT

41

42 This bill would establish a Water Supply Open Space and
43 Farmland Trust Fund Account in the Department of the Treasury.
44 Moneys in the fund would be derived from: (1) a water
45 consumption user fee imposed on the owner or operator of every
46 public community water system equal to forty cents per thousand
47 gallons of water delivered to a consumer; and (2) a water diversion
48 user fee imposed on every person required by law to obtain a

1 diversion permit or a water use registration equal to forty cents per
2 thousand gallons of water diverted for a consumptive use. The
3 amount due from any person subject to one of these fees would not
4 exceed \$50,000 per year. The fees imposed and collected would be
5 constitutionally dedicated for open space and farmland preservation
6 purposes.

7 The moneys in the fund would be used to provide funding,
8 including loans or grants, for the acquisition and development of
9 lands for recreation and conservation purposes and for the
10 preservation of farmland for agricultural or horticultural use and
11 production in the manner set forth and pursuant to the provisions of
12 the "Garden State Preservation Trust Act," P.L.1999, c.152
13 (C.13:8C-1 et seq.). All available moneys in the fund must be
14 appropriated annually solely for the following purposes:

15 (1) 65% of the estimated annual balance of the fund would be
16 annually appropriated to the Garden State Green Acres Preservation
17 Trust Fund established pursuant to section 19 of P.L.1999, c.152
18 (C.13:8C-19) for use by the Department of Environmental
19 Protection (DEP) to: (a) pay the cost of acquisition and
20 development of lands by the State for recreation and conservation
21 purposes; (b) provide grants and loans to assist local government
22 units to pay the cost of acquisition and development of lands for
23 recreation and conservation purposes; and (c) provide grants to
24 assist qualifying tax exempt nonprofit organizations to pay the cost
25 of acquisition and development of lands for recreation and
26 conservation purposes;

27 (2) 35% of the estimated annual balance of the fund would be
28 annually appropriated to the Garden State Farmland Preservation
29 Trust Fund established pursuant to section 20 of P.L.1999, c.152
30 (C.13:8C-20) for use by the State Agriculture Development
31 Committee for farmland preservation purposes.

32 It is estimated that a surcharge equal to forty cents per thousand
33 gallons of water would raise approximately \$150,000,000 in annual
34 revenue. Since the average residential water usage in New Jersey is
35 80,000 gallons of water annually, a forty cents per thousand gallons
36 rate would cost the average household \$32 per year.