

SENATE, No. 826

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

Concerns calculation of value for conveyance of certain State-owned lands

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the valuation of conveyances for certain State-
2 owned lands, and amending P.L.1993, c.38.

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

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7 1. Section 1 of P.L.1993, c.38 (C.13:1D-51) is amended to read
8 as follows:

9 1. As used in [sections 1 through 7 of this amendatory and
10 supplementary act] P.L.1993, c.38 (C.13:1D-51 et seq.) :

11 "Commissioner" means the Commissioner of the Department of
12 Environmental Protection.

13 "Convey" means to sell, exchange, lease for a term of [25] five
14 years or more, grant, or agree to sell, exchange, lease for a term of
15 [25] five years or more, or grant, in an amount greater than one
16 acre.

17 "Department" means the Department of Environmental
18 Protection, or any agency, division, or office thereof.

19 "Green Acres funds" means any funds made available for the
20 acquisition or development of lands by the State for recreation and
21 conservation purposes pursuant to: P.L.1961, c.46; P.L.1971,
22 c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987,
23 c.265; [and] P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204;
24 P.L.2007, c.119; P.L.2009, c.117; or any similar act for such
25 purposes that may be enacted, or any such funds administered
26 pursuant to P.L.1961, c.45 (C.13:8A-1 et seq.), P.L.1971, c.419
27 (C.13:8A-19 et seq.), [and] P.L.1975, c.155 (C.13:8A-35 et seq.),
28 and P.L.1999, c.152 (C.13:8C-1 et seq.), or any similar act for such
29 purposes that may be enacted.

30 "Land" or "lands" means real property, including improvements
31 thereof or thereon, rights-of-way, water, riparian and other rights,
32 easements, and privileges, and all other rights or interests of any
33 kind or description in, relating to, or connected with real property.

34 "Minor conveyance" means a conveyance or proposed
35 conveyance of lands acquired or developed by the State with Green
36 Acres funds, or acquired or developed by the State in any other
37 manner and administered by the department, which lands shall be
38 greater than one acre but less than five acres in size and valued at
39 less than \$50,000, and which conveyance or proposed conveyance
40 under law requires the approval of the State House Commission
41 established pursuant to R.S.52:20-1 et seq.

42 (cf: P.L.1993, c.38, s.1)

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 2. Section 6 of P.L.1993, c.38 (C.13:1D-56) is amended to read
2 as follows:

3 6. a. 【For】(1) Except as provided otherwise pursuant to
4 paragraph (2) of this subsection, for the purpose of determining the
5 amount of consideration to be paid or transferred to the State in
6 exchange for conveying lands acquired or developed by the State
7 with Green Acres funds, or acquired or developed by the State in
8 any other manner and administered by the department, the value of
9 such lands shall be based upon their intended use upon conveyance
10 or upon their highest and best use, whichever shall provide to the
11 State the greatest value in return. When determining the value of
12 such lands based upon their intended use upon conveyance, the
13 revenue generation potential of the land shall be taken into
14 consideration and calculated as part of the value of the land, and
15 this amount shall be the minimum value that may be accepted by
16 the State in exchange for the conveyance of the lands.

17 (2) For any lands acquired or developed by the State with Green
18 Acres funds or acquired or developed by the State in any other
19 manner and administered by the department, which are to be
20 conveyed by the State to a nonprofit organization whose purpose
21 includes environmental protection or open space, farmland, or
22 historic preservation, the value of the lands shall be based only
23 upon fair market value or upon a value less than fair market value
24 as may be determined by the State for good cause in furtherance of
25 the public interest.

26 (3) A conveyance that is a lease of land from the State to a
27 nonprofit organization, pursuant to paragraph (2) of this subsection,
28 shall include a requirement that any sublease receive prior approval
29 from the department.

30 b. If lands acquired or developed by the State with Green Acres
31 funds, or acquired or developed by the State in any other manner
32 and administered by the department, are conveyed, and within 25
33 years after the date of the conveyance the governing body of the
34 municipality wherein the lands are located proposes to amend or
35 revise for any reason the zoning ordinance as it pertains to those
36 lands, or the zoning board of adjustment or planning board of the
37 municipality receives an application for a variance from the zoning
38 regulations or requirements pertaining to those lands, the governing
39 body, zoning board of adjustment, or planning board, as the case
40 may be, shall notify the commissioner in writing at least 30 days
41 prior to taking action on the proposed amendment or revision to the
42 zoning ordinance or variance application, as the case may be,
43 according to procedures to be developed therefor by the department
44 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
45 (C.52:14B-1 et seq.).

46 c. (1) If the governing body of the municipality wherein the
47 lands are located amends or revises for any reason the zoning

1 ordinance as it pertains to those lands, or the zoning board of
2 adjustment or planning board of the municipality grants a variance
3 from the zoning regulations or requirements pertaining to those
4 lands, as the case may be, within 25 years after the date of
5 conveyance of the lands by the State, and that amendment or
6 revision of the zoning ordinance or grant of a variance results in an
7 increase in the value of the lands, an amount of money equal to that
8 increase in value measured as of the effective date of the
9 amendment or revision of the zoning ordinance or grant of a
10 variance, as the case may be, shall be paid to the department by the
11 then current owner of the lands within 60 days after the date of the
12 last public hearing required pursuant to paragraph (3) of this
13 subsection, or if a court determination of the value is required
14 pursuant to paragraph (2) of this subsection, within 60 days after the
15 date of the court's judgment, for deposit and use by the department
16 pursuant to section 7 of **[this amendatory and supplementary act]**
17 P.L.1993, c.38 (C.13:1D-57) . In addition, the current owner of the
18 lands on the effective date of the first amendment or revision of the
19 zoning ordinance or first grant of a variance pertaining to those
20 lands, as the case may be, shall dedicate 20% of the lands for use as
21 public open space.

22 (2) If the department and the then current owner are unable to
23 agree on the amount of the increased value resulting from an
24 amendment or revision of the zoning ordinance or grant of a
25 variance pertaining to the lands, as the case may be, the value shall
26 be decided in a summary proceeding before the Superior Court.

27 (3) The department shall not agree to any determination of the
28 amount of money equal to an increased value unless it has first
29 conducted two additional public hearings and given appropriate
30 notice of its intentions according to the procedures set forth in
31 sections 2, 3, and 4 of **[this amendatory and supplementary act]**
32 P.L.1993, c.38 (C.13:1D-52 through C.13:1D-54) .

33 (4) If the current owner of the lands on the effective date of any
34 amendment or revision of the zoning ordinance or grant of a
35 variance pertaining to those lands, as the case may be, is unable to
36 pay an amount of money equal to the increase in value required
37 pursuant to this subsection, the lands shall revert to the State and
38 shall be managed by the department for the same purposes as they
39 were immediately prior to the original conveyance by the State.

40 d. The department may accept land of equivalent or greater
41 value in lieu of any payment required pursuant to subsection c. of
42 this section, but prior to doing so, the department shall comply with
43 the requirements of paragraph (3) of that subsection.

44 e. The terms of subsections b., c., and d. of this section shall be
45 incorporated into any contract of sale, lease, or other similar
46 instrument, as well as any deed or other instrument of conveyance,

1 involving the lands, and shall run with the land.
2 (cf: P.L.1993, c.38, s.6)

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4 3. This act shall take effect immediately.

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STATEMENT

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9 This bill would revise the procedures, requirements, and other
10 provisions established by P.L.1993, c.38 (C.13:1D-51 et seq.)
11 (commonly referred to as the "Ogden-Rooney process") that must
12 be followed before lands, including structures thereon, acquired or
13 developed by the State with Green Acres funds, or acquired or
14 developed by the State in any other manner and administered by the
15 Department of Environmental Protection (DEP), or any agency of
16 the department, may be conveyed.

17 Under current law, the Ogden-Rooney process is required to be
18 followed for leases for terms of 25 years or more, in addition to all
19 types of sales and exchanges. This bill would reduce this timeframe
20 for leases subject to the Ogden-Rooney process from 25 years to
21 five years.

22 The Ogden-Rooney process involves, among other things, the
23 preparation and submission of a report identifying the reasons for,
24 and all advantages and disadvantages and benefits and detriments
25 of, the proposed conveyance, assessing the environmental and
26 recreational impact of that proposed conveyance, and assessing the
27 environmental and economic value of the lands proposed to be
28 conveyed under both their current and proposed uses. In addition,
29 the law requires, for the purpose of determining the amount of
30 consideration to be paid or transferred to the State in exchange for
31 conveying lands acquired or developed by the State with Green
32 Acres funds, or acquired or developed by the State in any other
33 manner and administered by the DEP, the value of the lands be
34 based upon their intended use upon conveyance or upon their
35 highest and best use, whichever would provide to the State the
36 greatest value in return.

37 This bill would provide that, when determining the value of
38 lands based upon their intended use upon conveyance, the revenue
39 generation potential of the land, i.e., how much revenue would be
40 generated from the land if the sale, exchange, lease, easement,
41 right-of-way, or other similar property interest is granted, would be
42 required to be taken into consideration and calculated as part of the
43 value of the land, and this amount would be the minimum value that
44 may be accepted by the State in exchange for the conveyance of the
45 lands, with one exception. The exception would be for when
46 recreation and conservation lands are to be conveyed by the State to
47 a nonprofit organization whose purpose includes environmental

S826 B. SMITH, CARDINALE

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1 protection or open space, farmland, or historic preservation, the
2 value of the lands would be based only upon fair market value or
3 upon a value less than fair market value as may be determined by
4 the State for good cause in furtherance of the public interest. A
5 conveyance that is a lease of land from the State to a nonprofit
6 organization would also include a requirement that any sublease
7 receive prior approval from the DEP.