

SENATE, No. 231

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Establishes home elevation fund and dedicates up to \$5 million of realty transfer fee revenue annually for this purpose.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning home elevations, dedicating a portion of the
2 realty transfer fee revenue for this purpose, and amending and
3 supplementing various parts of the statutory law.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) a. There is created in the Department of
9 Environmental Protection a special non-lapsing fund to be known as
10 the “Flood Protection and Home Elevation Fund.” The money in
11 this fund is to be dedicated and shall be used only to carry out the
12 purpose specified in subsection b. of this section. The fund shall be
13 credited with all revenues collected and deposited in the fund
14 pursuant to section 4 of P.L.1968, c.49 (C.46:15-8), all interest and
15 other income received from the investment of money in the fund,
16 and any money which, from time to time, may otherwise become
17 available for the purposes of the fund. Pending the use thereof
18 pursuant to the provisions of subsection b. of this section, the
19 money deposited in the fund shall be held in interest-bearing
20 accounts in public depositories, as defined pursuant to section 1 of
21 P.L.1970, c.236 (C.17:9-41), and may be invested or reinvested in
22 such securities as are approved by the State Treasurer. Interest or
23 other income earned on monies deposited into the fund shall be
24 credited to the fund for use as set forth in subsection b. of this
25 section for other money in the fund.

26 b. Monies deposited in the “Flood Protection and Home
27 Elevation Fund” shall be used to reimburse a homeowner who
28 undertakes a home elevation project subsequent to the effective date
29 of this act in an amount equal to 25 percent of the annual interest
30 payment made by the homeowner on any loans taken to finance the
31 home elevation project, or \$750, whichever is less; provided,
32 however, that the county in which the home elevation project takes
33 place provides matching funds to the homeowner in the same
34 amount.

35 c. In order to qualify for reimbursement pursuant to subsection
36 b. of this section, a homeowner shall first obtain all necessary State
37 and local zoning and land use approvals for the home elevation
38 project, and approval from the financing institution for any loan
39 taken to finance the home elevation project. The homeowner shall
40 then apply to the department and to the county on a form and in a
41 manner established by the department. No payment shall be made
42 by the State to the homeowner until the home elevation is complete,
43 and proof thereof to the satisfaction of the department has been
44 provided to the department. A qualifying homeowner shall be
45 eligible to reapply to the State and county for reimbursement each

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 year the homeowner continues to pay interest on a loan taken to
2 finance the home elevation project.

3 d. Before a county provides matching funds to homeowners
4 pursuant to subsection b. of this section, the governing body of the
5 county shall establish, by ordinance or resolution, as appropriate, a
6 source of funding for the matching funds, which may include, but
7 need not be limited to, the county portion of the basic fee collected
8 pursuant to paragraph (1) of subsection a. of section 3 of
9 P.L.1968, c.49 (C.46:15-7) or county open space trust funds as
10 specified in paragraph (1) of subsection a. of section 2
11 of P.L.1997, c.24 (C.40:12-15.2).

12 e. As used in this section:

13 "Department" means the Department of Environmental
14 Protection.

15 "Home elevation project" means a project to elevate or raise a
16 single family or two-family house that is the primary residence of
17 the owner to eliminate or significantly mitigate the threat of
18 flooding and its attendant damage and destruction to the property,
19 whether the single family or two-family house is intact or is being
20 restored and reconstructed at its original location to a higher
21 elevation.

22

23 2. Section 1 of P.L.1997, c.24 (C.40:12-15.1) is amended to
24 read as follows:

25 1. As used in P.L.1997, c.24 (C.40:12-15.1 et seq.):

26 "Acquisition" or "acquire" means the securing of a fee simple or
27 a lesser interest in land, including but not limited to an easement
28 restricting development, by gift, purchase, installment purchase
29 agreement, devise, or condemnation.

30 "Blue Acres project" means any project to acquire, for recreation
31 and conservation purposes, lands that have been damaged by, or
32 may be prone to incurring damage caused by, storms or storm-
33 related flooding, or that may buffer or protect other lands from such
34 damage, and includes the demolition of structures on, the removal
35 of debris from, and the restoration of those lands to a natural state
36 or to a state useful for recreation and conservation purposes.

37 "Charitable conservancy" means a corporation or trust exempt
38 from federal income taxation under paragraph (3) of subsection (c)
39 of section 501 of the federal Internal Revenue Code of 1986 (26
40 U.S.C. s.501(c)(3)), whose purposes include (1) acquisition and
41 preservation of lands in a natural, scenic, or open condition, or (2)
42 historic preservation of historic properties, structures, facilities,
43 sites, areas, or objects, or the acquisition of such properties,
44 structures, facilities, sites, areas, or objects for historic preservation
45 purposes.

46 "County trust fund" means a "County Open Space, Recreation,
47 Floodplain Protection, and Farmland and Historic Preservation

1 Trust Fund" created pursuant to subsection c. of section 2 of
2 P.L.1997, c.24 (C.40:12-15.2).

3 "Development" means any improvement to land acquired for
4 recreation and conservation purposes designed to expand and
5 enhance its utilization for those purposes.

6 "Farmland" means land actively devoted to agricultural or
7 horticultural use that is valued, assessed, and taxed pursuant to the
8 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-
9 23.1 et seq.).

10 "Farmland preservation purposes" means the long-term
11 preservation of farmland for agricultural or horticultural use.

12 "Historic preservation" means the performance of any work
13 relating to the stabilization, repair, rehabilitation, renovation,
14 restoration, improvement, protection, or preservation of an historic
15 property, structure, facility, site, area, or object.

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

21 "Home elevation project" means a project to elevate or raise a
22 single family or two-family house that is the primary residence of
23 the owner to eliminate or significantly mitigate the threat of
24 flooding and its attendant damage and destruction to the property,
25 whether the single family or two-family house is intact or is being
26 restored and reconstructed at its original location to a higher
27 elevation.

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

32 "Municipal trust fund" means a "Municipal Open Space,
33 Recreation, Floodplain Protection, and Farmland and Historic
34 Preservation Trust Fund" created pursuant to subsection c. of
35 section 7 of P.L.1997, c.24 (C.40:12-15.7).

36 "Public indoor recreation" means public recreation in enclosed
37 structures or facilities, and includes but is not limited to swimming
38 pools, basketball courts, and ice skating rinks open for public use.

39 "Recreation and conservation purposes" means the use of lands
40 for parks, open space, natural areas, ecological and biological study,
41 forests, water reserves, wildlife preserves, fishing, hunting,
42 camping, boating, winter sports, or similar uses for either public
43 outdoor recreation or conservation of natural resources, or both, or
44 the use of lands for public indoor recreation.

45 (cf: P.L.2011, c.173, s.1)

46

47 3. Section 2 of P.L.1997, c.24 (C.40:12-15.2) is amended to
48 read as follows:

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

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

9 (b) development of lands acquired for recreation and
10 conservation purposes;

11 (c) maintenance of lands acquired for recreation and
12 conservation purposes;

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

14 (e) historic preservation of historic properties, structures,
15 facilities, sites, areas, or objects, and the acquisition of such
16 properties, structures, facilities, sites, areas, or objects for historic
17 preservation purposes;

18 (f) payment of debt service on indebtedness issued or incurred
19 by a county for any of the purposes set forth in subparagraph (a),
20 (b), (d), (e) or (g) of this paragraph; **[or]**

21 (g) Blue Acres projects; or

22 (h) Home elevation projects pursuant to section 1 of
23 P.L. , c. (C.) (pending before the Legislature as this bill) .

24 (2) The amount or rate of the annual levy may be subdivided in
25 the proposition to reflect the relative portions thereof to be allocated
26 to any of the respective purposes specified in paragraph (1) of this
27 subsection or may be depicted as a total amount or rate, to be
28 subdivided in a manner determined previously, or to be determined
29 at a later date, by the governing body of the county after conducting
30 at least one public hearing thereon.

31 b. Upon approval of the proposition by a majority of the votes
32 cast by the voters of the county, the governing body of the county
33 may annually raise by taxation a sum not to exceed the amount or
34 rate set forth in the proposition approved by the voters for the
35 purposes specified therein. If the amount or rate set forth in the
36 proposition was not subdivided among the various purposes, the
37 governing body of the county may determine the appropriate
38 amount or rate to be allocated to each purpose after conducting at
39 least one public hearing thereon.

40 c. Amounts raised by the levy imposed pursuant to this section
41 shall be deposited into a "County Open Space, Recreation,
42 Floodplain Protection, and Farmland and Historic Preservation
43 Trust Fund" to be created by the county, and shall be used
44 exclusively for the purposes authorized by the voters of the county.
45 Any interest or other income earned on monies deposited into the
46 county trust fund shall be credited to the fund to be used for the
47 same purposes as the principal. Separate accounts may be created
48 within the county trust fund for the deposit of revenue to be

1 expended for each of the purposes specified in the proposition
2 approved by the voters of the county. A county may deposit other
3 funds into the County Open Space, Recreation, Floodplain
4 Protection, and Farmland and Historic Preservation Trust Fund, as it
5 may, from time to time, deem appropriate.

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

9 (b) Selection of projects to develop or maintain lands acquired
10 for recreation and conservation purposes shall be in accordance
11 with an open space and recreation development and maintenance
12 plan prepared and adopted by the county.

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

20 (d) Selection of historic preservation projects shall be in
21 accordance with a historic preservation plan prepared and adopted
22 by the county.

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

25 e. The governing body of a county may submit to the voters of
26 the county in a general or special election a proposition amending
27 or supplementing a proposition previously submitted, approved, and
28 implemented as provided pursuant to this section either (1)
29 changing the amount or rate of the annual levy, or (2) adding or
30 removing purposes authorized pursuant to this section for which the
31 levy may be expended. Upon approval of the amendatory or
32 supplementary proposition by a majority of the votes cast by the
33 voters of the county, the governing body of the county shall
34 implement it in the same manner as set forth in P.L.1997, c.24
35 (C.40:12-15.1 et seq.) for implementation of the original
36 proposition.

37 f. Upon petition to the governing body of a county signed by
38 the voters of the county equal in number to at least 15% of the votes
39 cast therein at the last preceding general election, filed with the
40 governing body at least 90 days before a general or special election,
41 the governing body of the county shall submit to the voters of the
42 county in the general or special election the proposition otherwise
43 authorized pursuant to subsection a. or subsection e. of this section,
44 as the case may be.

45 (cf: P.L.2011, c.173, s.2)

46
47 4. Section 4 of P.L.1968, c.49 (C.46:15-8) is amended to read
48 as follows:

1 4. a. The proceeds of the fees collected by the county
2 recording officer, as authorized by P.L.1968, c.49 (C.46:15-
3 5 et seq.), shall be accounted for and remitted to the county
4 treasurer.

5 b. (1) The county portion of the basic fee collected pursuant to
6 paragraph (1) of subsection a. of section 3 of P.L.1968, c.49
7 (C.46:15-7) shall be retained by the county treasurer for the use of
8 the county. The county may use all or a portion of this money to
9 provide matching funds for home elevation projects pursuant to
10 section 1 of P.L. , c. (C.) (pending before the Legislature
11 as this bill).

12 (2) The State portion of the basic fee, the additional fee, and the
13 general purpose fee shall be paid to the State Treasurer for the use
14 of the State. Payments shall be made to the State Treasurer on the
15 tenth day of each month following the month of collection.

16 c. (1) Amounts, not in excess of \$25,000,000, paid during the
17 State fiscal year to the State Treasurer from the payment of the
18 State portion of the basic fee shall be credited to the "Shore
19 Protection Fund" created pursuant to section 1 of P.L.1992, c.148
20 (C.13:19-16.1), in the manner established under that section.

21 (2) In addition to the amounts credited to the "Shore Protection
22 Fund" pursuant to paragraph (1) of this subsection, amounts equal
23 to \$12,000,000 in each of the first 10 years after the date of
24 enactment of the "Highlands Water Protection and Planning Act,"
25 P.L.2004, c.120 (C.13:20-1 et al.) and to \$5,000,000 in each year
26 thereafter, paid during the State fiscal year to the State Treasurer
27 from the payment of fees collected by the county recording officer
28 other than the additional fee of \$0.75 for each \$500.00 of
29 consideration or fractional part thereof recited in the deed in excess
30 of \$150,000.00 shall be credited to the "Highlands Protection Fund"
31 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), in
32 the manner established under that section. No monies shall be
33 credited to the "Highlands Protection Fund" pursuant to this
34 paragraph until and unless the full amount of \$25,000,000 has first
35 been credited to the "Shore Protection Fund" pursuant to paragraph
36 (1) of this subsection.

37 (3) In addition to the amounts credited to the "Shore Protection
38 Fund" pursuant to paragraph (1) of this subsection and the
39 "Highlands Protection Fund" pursuant to paragraph (2) of this
40 subsection, amounts of up to \$5,000,000, as determined by the
41 department, paid during the State fiscal year to the State Treasurer
42 from the payment of the State portion of the basic fee shall be
43 credited to the "Flood Protection and Home Elevation Fund,"
44 created pursuant to section 1 of P.L. , c. (C.) (pending
45 before the Legislature as this bill). No monies shall be credited to
46 the "Flood Protection and Home Elevation Fund" pursuant to this
47 paragraph unless the full amount of \$25,000,000 has been credited
48 to the "Shore Protection Fund" pursuant to paragraph (1) of this

1 subsection and the full amount of \$5,000,000 has been credited to
2 the “Highlands Protection Fund” pursuant to paragraph (2) of this
3 subsection.

4 d. All amounts paid to the State Treasurer from the payment of
5 the additional fee shall be credited to the Neighborhood
6 Preservation Nonlapsing Revolving Fund established pursuant to
7 P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established
8 under section 20 thereof (C.52:27D-320).
9 (cf: P.L.2004, c.120, s.61)

10
11 5. Section 2 of P.L.1992, c.148 (C.46:15-10.2) is amended to
12 read as follows:

13 2. a. The annual appropriations act for each State fiscal year
14 shall, without other conditions, limitations or restrictions on the
15 following:

16 (1) credit amounts paid to the State Treasurer, if any, in
17 payment of fees collected pursuant to paragraph (1) or paragraph
18 (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) to the
19 "Shore Protection Fund" created pursuant to section 1 of
20 P.L.1992, c.148 (C.13:19-16.1), the Neighborhood Preservation
21 Nonlapsing Revolving Fund established pursuant to section 20 of
22 P.L.1985, c.222 (C.52:27D-320), and the "Highlands Protection
23 Fund" created pursuant to section 21 of P.L.2004, c.120 (C.13:20-
24 19), pursuant to the requirements of section 4 of P.L.1968, c.49
25 (C.46:15-8);

26 (2) appropriate the balance of the "Shore Protection Fund"
27 created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for
28 the purposes of that fund;

29 (3) appropriate the balance of the Neighborhood Preservation
30 Nonlapsing Revolving Fund established pursuant to section 20 of
31 P.L.1985, c.222 (C.52:27D-320), for the purposes of that fund;
32 **[and]**

33 (4) appropriate the balance of the "Highlands Protection Fund"
34 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), for
35 the purposes of that fund ; and

36 (5) appropriate the balance of the “Flood Protection and Home
37 Elevation Fund” created pursuant to section 1 of P.L. , c. (C.)
38 (pending before the Legislature as this bill), for the purposes of that
39 fund .

40 b. If the requirements of subsection a. of this section are not
41 met on the effective date of an annual appropriations act for the
42 State fiscal year, or if an amendment or supplement to an annual
43 appropriations act for the State fiscal year should violate any of the
44 requirements of subsection a. of this section, the Director of the
45 Division of Budget and Accounting in the Department of the
46 Treasury shall, not later than five days after the enactment of the
47 annual appropriations act, or an amendment or supplement thereto,
48 that violates any of the requirements of subsection a. of this section,

1 certify to the Director of the Division of Taxation that the
2 requirements of subsection a. of this section have not been met.
3 (cf: P.L.2004, c.120, s.62)
4

5 6. The Commissioner of Environmental Protection shall, in
6 consultation with the State Treasurer, and in accordance with the
7 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
8 seq.), adopt rules and regulations to implement P.L. , c. (C.)
9 (pending before the Legislature as this bill), including procedures
10 and standards of eligibility for reimbursement pursuant to section 1
11 of P.L. , c. (C.) (pending before the Legislature as this
12 bill).
13

14 7. This act shall take effect immediately, but sections 1 through
15 5 shall apply to the fiscal years beginning on and after July 1 next
16 following the date of its enactment.
17
18

19 STATEMENT

20

21 This bill would establish a special, non-lapsing fund within the
22 Department of Environmental Protection to be known as the “Flood
23 Protection and Home Elevation Fund.” Monies in the fund would
24 be used to reimburse a homeowner who undertakes a home
25 elevation project for 25 percent of the annual interest payment made
26 by the homeowner on a loan to finance the home elevation project,
27 or \$750, whichever is less. However, a homeowner will only be
28 reimbursed if the county in which the home elevation project takes
29 place agrees to provide matching funds in the same amount.

30 In order to qualify for reimbursement, a homeowner would first
31 need to obtain all necessary State and local zoning and land use
32 approvals for the home elevation project, as well as approval from
33 the financing institution for any loan taken to finance the project.
34 The homeowner would then apply to the State and county for
35 reimbursement. No payment would be made by the State to the
36 homeowner until the home elevation is complete and proof of
37 completion has been submitted to the department. A qualifying
38 homeowner would be eligible to reapply to the State and county for
39 reimbursement during each year the homeowner pays interest on a
40 loan taken to finance the home elevation project.

41 The bill would dedicate up to \$5 million of the State share of the
42 realty transfer fee annually to the “Flood Protection and Home
43 Elevation Fund.” The fund would also be credited with all interest
44 and other income received from the investment of money in the
45 fund. However, the bill provides that no money would be credited
46 to the fund unless \$25 million of the State share of the realty
47 transfer fee has first been credited to the “Shore Protection Fund,”
48 and \$5 million of the State share of the realty transfer fee has been

1 credited to the “Highlands Protection Fund,” both of which are
2 required by current law.

3 Finally, the bill provides that, before a county can provide
4 matching funds to homeowners for home elevation projects, the
5 county must first establish a source of funding, which may include,
6 but need not be limited to, the county share of the realty transfer fee
7 or county open space trust funds. The bill would amend the county
8 open space trust fund law to explicitly allow counties to use trust
9 funds for home elevation projects pursuant to this bill.