

[Third Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1110 and 1158

STATE OF NEW JERSEY

ADOPTED JUNE 6, 1996

**Sponsored by Senators KYRILLOS, CIESLA, INVERSO
and Assemblyman Corodemus**

1 **AN ACT** concerning recreation and conservation, farmland
2 preservation, and historic preservation, amending R.S.40:12-14
3 and P.L.1992, c.157, supplementing Title 40 of the Revised
4 Statutes, and repealing parts of the statutory law.

5

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

8

9 1. (New section) As used in this act:

10 "Acquisition" means the securing of a fee simple or a lesser interest
11 in land, including but not limited to an easement restricting
12 development, by gift, purchase, installment purchase agreement,
13 devise, or condemnation;

14 "Charitable conservancy" means a corporation or trust exempt
15 from federal income taxation under paragraph (3) of subsection (c) of
16 section 501 of the federal Internal Revenue Code of 1986 (26 U.S.C.
17 §501(c)(3)), whose purposes include (1) acquisition and preservation
18 of lands in a natural, scenic, or open condition, or (2) historic
19 preservation of historic properties, structures, facilities, sites, areas, or
20 objects, or the acquisition of such properties, structures, facilities,
21 sites, areas, or objects for historic preservation purposes;

22 "County trust fund" means a "County Open Space, Recreation, and
23 Farmland and Historic Preservation Trust Fund" created pursuant to
24 subsection c. of section 2 of this act;

25 "Development" means any improvement to land acquired for

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 20, 1996.

² Assembly floor amendments adopted July 18, 1996.

³ Senate amendments adopted in accordance with Governor's recommendations December 19, 1996.

1 recreation and conservation purposes designed to expand and enhance
2 its utilization for those purposes;

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

7 "Farmland preservation purposes" means the long-term
8 preservation of farmland for agricultural or horticultural use;

9 "Historic preservation" means the performance of any work
10 relating to the stabilization, repair, rehabilitation, renovation,
11 restoration, improvement, protection, or preservation of a historic
12 property, structure, facility, site, area, or object;

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

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

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

28 "Recreation and conservation purposes" means the use of lands for
29 parks, open space, natural areas, ecological and biological study,
30 forests, water reserves, wildlife preserves, fishing, hunting, camping,
31 boating, winter sports, or similar uses for either public outdoor
32 recreation or conservation of natural resources, or both, or the use of
33 lands for public indoor recreation.

34

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

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

41 (b) development of lands acquired for recreation and conservation
42 purposes;

43 (c) maintenance of lands acquired for recreation and conservation
44 purposes;

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

46 (e) historic preservation of historic properties, structures,

1 facilities, sites, areas, or objects, and the acquisition of such
2 properties, structures, facilities, sites, areas, or objects for historic
3 preservation purposes; or

4 (f) payment of debt service on indebtedness issued or incurred by
5 a county for any of the purposes set forth in subparagraphs (a), (b), (d)
6 or (e) of this paragraph.

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

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

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

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

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

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

1 (d) Selection of historic preservation projects shall be in
2 accordance with a historic preservation plan prepared and adopted by
3 the county.

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

6 e. The governing body of a county may submit to the voters of the
7 county in a general or special election a proposition amending or
8 supplementing a proposition previously submitted, approved, and
9 implemented as provided pursuant to this section either (1) changing
10 the amount or rate of the annual levy, or (2) adding or removing
11 purposes authorized pursuant to this section for which the levy may be
12 expended. Upon approval of the amendatory or supplementary
13 proposition by a majority of the votes cast by the voters of the county,
14 the governing body of the county shall implement it in the same
15 manner as set forth in this act for implementation of the original
16 proposition.

17 f. Upon petition to the governing body of a county signed by the
18 voters of the county equal in number to at least 15% of the votes cast
19 therein at the last preceding general election, filed with the governing
20 body at least 90 days before a general or special election, the
21 governing body of the county shall submit to the voters of the county
22 in the general or special election the proposition otherwise authorized
23 pursuant to subsection a. or subsection e. of this section, as the case
24 may be.

25
26 3. (New section) a. Any county whose voters, prior to the
27 effective date of this act, approved pursuant to P.L.1989, c.30
28 (C.40:12-16 et seq.) a proposition authorizing the acquisition of lands
29 for conservation as open space or as farmland shall be deemed to have
30 approved a proposition for ¹[any or all of]¹ the purposes specified in
31 paragraph (1) of subsection a. of section 2 of this act ¹, but excluding
32 the ²[purposes] purpose² specified in ²[subparagraphs (b) and]
33 subparagraph² (c) of that paragraph if the proposition was approved
34 prior to the 24 months immediately preceding the effective date of
35 P.L....., c.....(C.....)(now pending before the Legislature as this
36 bill),¹ at the amount or rate specified in the original proposition, which
37 purposes shall be determined by ²adoption of a resolution or
38 ordinance, as appropriate, by² the governing body of the county after
39 conducting at least one public hearing thereon ³and subject to the
40 requirements of subsections b., c. and d. of this section³ . The county
41 open space and farmland preservation trust fund created for the
42 purposes of P.L.1989, c.30 (C.40:12-16 et seq.) shall be dissolved and
43 any monies remaining therein shall be deposited into the "County Open
44 Space, Recreation, and Farmland and Historic Preservation Trust
45 Fund" created pursuant to subsection c. of section 2 of this act to be
46 utilized for the purposes determined by the governing body of the

1 county as authorized pursuant to this subsection.

2 ³b. A county shall not expend more than \$100,000 for any
3 proposed project or use to be undertaken pursuant to a resolution or
4 ordinance adopted pursuant to subsection a. of this section authorizing
5 a purpose specified in subparagraphs (b), (c), or (f) of paragraph (1)
6 of subsection a. of section 2 of this act, unless the governing body of
7 the county first conducts a public hearing on the proposed project or
8 use and adopts a resolution or ordinance, as appropriate, authorizing
9 the expenditure. Any public hearing required pursuant to this
10 subsection shall be held at least 45 days before the governing body of
11 the county takes action to adopt the resolution or ordinance
12 authorizing the expenditure.

13 c. In addition to any other applicable requirements of law, rule or
14 regulation, the governing body of the county shall provide notice of
15 the public hearing required pursuant to subsection b. of this section at
16 least 30 days before the date of the hearing as follows:

17 (1) By mailing or otherwise providing a copy of the notice to: (a)
18 the county clerk and to the municipal clerk of every municipality in
19 which the land or lands affected by the proposed project or use are
20 located; and (b) any person who requests in writing of the governing
21 body to receive in advance such notices; and

22 (2) By publishing the notice in a daily or weekly newspaper of
23 general circulation in the county and each municipality in which the
24 land or lands to be affected by the proposed project or use are located.

25 d. The governing body of the county shall include the following
26 information in all notices required pursuant to subsection c. of this
27 section: (1) a general description of the proposed project or use and
28 the location of the land or lands to be affected; (2) the aggregate
29 amount of monies to be utilized for the proposed project or use; (3) a
30 schedule setting forth the anticipated commencement and completion
31 date for the proposed project or use; (4) the date, time, and place of
32 the public hearing; (5) a statement that the public may submit written
33 comments to the governing body of the county on or before the date
34 of the public hearing; and (6) the name and address of the person
35 designated by the governing body of the county to receive the written
36 comments and to contact for additional information.³

37 ³[b.] e.³ Any county whose voters, prior to the effective date of
38 this act, approved pursuant to R.S.40:12-10 et seq. a proposition
39 authorizing the establishment, maintenance, and improvement of a
40 system of public recreation shall be deemed to have approved a
41 proposition for any or all of the purposes specified in paragraph (1) of
42 subsection a. of section 2 of this act at the amount or rate specified in
43 the original proposition, which purposes shall be determined by
44 ²adoption of a resolution or ordinance, as appropriate, by² the
45 governing body of the county after conducting at least one public
46 hearing thereon. Any fund created for the purposes of R.S.40:12-10

1 et seq. shall be dissolved and any monies remaining therein shall be
2 deposited into the "County Open Space, Recreation, and Farmland and
3 Historic Preservation Trust Fund" created pursuant to subsection c. of
4 section 2 of this act to be utilized for the purposes determined by the
5 governing body of the county as authorized pursuant to this
6 subsection.

7
8 4. (New section) Lands acquired by a county using revenue raised
9 pursuant to this act shall be held in trust and shall be used exclusively
10 for the purposes authorized under this act.

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

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

40
41 6. (New section) a. The governing body of any county in which
42 the voters of the county have approved a proposition in accordance
43 with this act may adopt a resolution authorizing the distribution of
44 monies deposited into the "County Open Space, Recreation, and
45 Farmland and Historic Preservation Trust Fund" created pursuant to
46 subsection c. of section 2 of this act, in such portions as deemed

1 appropriate, to municipalities within the county or to charitable
2 conservancies, to be used in the county by those municipalities or
3 charitable conservancies for the purposes of this act in accordance
4 with the provisions, conditions, and requirements of thereof, provided
5 that any municipality or charitable conservancy receiving such monies
6 has presented a plan to the county documenting the proposed use of
7 the monies.

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

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

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

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

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

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

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

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

40

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

- 1 (a) acquisition of lands for recreation and conservation purposes;
2 (b) development of lands acquired for recreation and conservation
3 purposes;
4 (c) maintenance of lands acquired for recreation and conservation
5 purposes;
6 (d) acquisition of farmland for farmland preservation purposes;
7 (e) historic preservation of historic properties, structures, facilities,
8 sites, areas, or objects, and the acquisition of such properties,
9 structures, facilities, sites, areas, or objects for historic preservation
10 purposes; or
11 (f) payment of debt service on indebtedness issued or incurred by
12 a municipality for any of the purposes set forth in subparagraphs (a),
13 (b), (d) or (e) of this paragraph.
- 14 (2) The amount or rate of the annual levy may be subdivided in the
15 proposition to reflect the relative portions thereof to be allocated to
16 any of the respective purposes specified in paragraph (1) of this
17 subsection or may be depicted as a total amount or rate, to be
18 subdivided in a manner determined previously, or to be determined at
19 a later date, by the governing body of the municipality after
20 conducting at least one public hearing thereon.
- 21 b. Upon approval of the proposition by a majority of the votes cast
22 by the voters of the municipality, the governing body of the
23 municipality may annually raise by taxation a sum not to exceed the
24 amount or rate set forth in the proposition approved by the voters for
25 the purposes specified therein. If the amount or rate set forth in the
26 proposition was not subdivided among the various purposes, the
27 governing body of the municipality may determine the appropriate
28 amount or rate to be allocated to each purpose after conducting at
29 least one public hearing thereon.
- 30 c. Amounts raised by the levy imposed pursuant to this section
31 shall be deposited into a "Municipal Open Space, Recreation, and
32 Farmland and Historic Preservation Trust Fund" to be created by the
33 municipality, and shall be used exclusively for the purposes authorized
34 by the voters of the municipality. Any interest or other income earned
35 on monies deposited into the municipal trust fund shall be credited to
36 the fund to be used for the same purposes as the principal. Separate
37 accounts may be created within the municipal trust fund for the deposit
38 of revenue to be expended for each of the purposes specified in the
39 proposition approved by the voters of the municipality.
- 40 d. The governing body of a municipality may submit to the voters
41 of the municipality in a general or special election a proposition
42 amending or supplementing a proposition previously submitted,
43 approved, and implemented as provided pursuant to this section either
44 (1) changing the amount or rate of the annual levy, or (2) adding or
45 removing purposes authorized pursuant to this section for which the
46 levy may be expended. Upon approval of the amendatory or

1 supplementary proposition by a majority of the votes cast by the voters
2 of the municipality, the governing body of the municipality shall
3 implement it in the same manner as set forth in this act for
4 implementation of the original proposition.

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

13
14 8. (New section) Any municipality whose voters, prior to the
15 effective date of this act, approved pursuant to R.S.40:12-10 et seq.
16 a proposition authorizing the establishment, maintenance, and
17 improvement of a system of public recreation shall be deemed to have
18 approved a proposition for any or all of the purposes specified in
19 paragraph (1) of subsection a. of section 7 of this act at the amount or
20 rate specified in the original proposition, which purposes shall be
21 determined by adoption of an ordinance by² the governing body of the
22 municipality after conducting at least one public hearing thereon. Any
23 fund created for the purposes of R.S.40:12-10 et seq. shall be
24 dissolved and any monies remaining therein shall be deposited into the
25 "Municipal Open Space, Recreation, and Farmland and Historic
26 Preservation Trust Fund" created pursuant to subsection c. of section
27 7 of this act to be utilized for the purposes determined by the
28 governing body of the municipality as authorized pursuant to this
29 section.

30
31 9. (New section) Lands acquired by a municipality using revenue
32 raised pursuant to this act shall be held in trust and shall be used
33 exclusively for the purposes authorized under this act.

34 After conducting at least one public hearing thereon and upon a
35 finding that the purposes of this act might otherwise be better served
36 or that any land acquired by a municipality pursuant thereto is required
37 for another public use, which finding shall be set forth in an ordinance
38 adopted by the governing body of the municipality, the governing body
39 may convey, through sale, exchange, transfer, or other disposition,
40 title to, or a lesser interest in, that land, provided that the governing
41 body shall replace any land conveyed under this section by land of at
42 least equal fair market value and of reasonably equivalent usefulness,
43 size, quality, and location to the land conveyed, and any monies
44 derived from the conveyance shall be deposited into the "Municipal
45 Open Space, Recreation, and Farmland and Historic Preservation
46 Trust Fund" created pursuant to subsection c. of section 7 of this act

1 for use for the purposes authorized by this act for monies in the
2 municipal trust fund. Any such conveyance shall be made in
3 accordance with the "Local Lands and Buildings Law," P.L.1971,
4 c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange,
5 the land or improvements thereon to be transferred to the trust shall
6 be at least equal in fair market value and of reasonably equivalent
7 usefulness, size, quality, and location to the land or improvements
8 transferred from the trust.

9

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

11 40:12-14. Any two or more municipalities may jointly establish,
12 maintain, and improve, or maintain and improve if already established,
13 a public recreation system including parks, open space, and
14 playgrounds [, as provided in R.S.40:12-10 through R.S.40:12-13].
15 (cf: P.L.1993, c.37, s.3)

16

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

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

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

39

40 12. R.S.40:12-10 through R.S.40:12-13, ³[sections 1, 2, 3, and 4
41 of]³ P.L.1989, c.30 ³[(C.40:12-16; 40:12-17; 40:12-18; and 40:12-19),
42 and] (C.40:12-16 et seq.), and³ section 1 of P.L.1994, c.125 (C.40:12-
43 19.1) are repealed; however, any proposition proposed thereunder and
44 scheduled prior to the effective date of this act for placement on the
45 ballot may nevertheless be placed on the ballot for

1 consideration by the voters of the county or municipality, as the case
2 may be, but shall be implemented as provided pursuant to this act.

3

4 13. This act shall take effect immediately and shall retroactively
5 apply to any proposition identical or similar to that described in this
6 act that is approved by the voters of any county or municipality, as the
7 case may be, prior to the effective date of this act.

8

9

10

11

12 Consolidates and revises county and municipal open space and
13 farmland tax referendum laws.