

CHAPTER 76

AN ACT establishing the New Jersey Cultural Trust and supplementing Title 52 of the Revised Statutes.

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

C.52:16A-72 Short title.

1. This act shall be known and may be cited as the “New Jersey Cultural Trust Act.”

C.52:16A-73 Findings, declarations relative to the New Jersey Cultural Trust.

2. The Legislature finds and declares that:

- a. Arts, history, and humanities contribute immeasurably to the quality of life in New Jersey, to the tourism industry and the economy, to the health and vitality of our cities, towns, and neighborhoods, to sound education, to the teaching of tolerance and understanding, and to the celebration of our rich cultural diversity and identity.

- b. Hundreds of nonprofit cultural organizations in this State play an invaluable role in ensuring that the benefits of the arts, history, and humanities are extended to the people and communities of New Jersey.

- c. These nonprofit cultural organizations work diligently and responsibly to carry out their vital missions. However, as a whole, they are undercapitalized, which makes them vulnerable to economic downturns.

Therefore, in order to ensure a stable and healthy cultural climate in this State that is sustainable for years to come and under fluctuating economic conditions, the Legislature hereby creates the New Jersey Cultural Trust and directs the establishment of a permanent, interest-generating fund to be an additional source of revenue to nonprofit arts, history, and humanities organizations, specifically for the building of endowments, the improvement of institutional and financial stability, and the capital improvement of cultural facilities.

C.52:16A-74 Definitions relative to the New Jersey Cultural Trust.

3. The following words or terms as used in this act shall have the following meaning, unless a different meaning clearly appears from the context:

“Account” means the New Jersey Cultural Trust Account in the General Fund established by section 8 of this act.

“Board” means the Board of Trustees established by section 5 of this act.

“Capital facilities projects” means those projects in New Jersey of a qualified organization that construct, expand, renovate, plan for, repair, rehabilitate, restore, adaptively re-use, purchase, effectuate long-term leaseholds on, replace, relocate, or otherwise improve cultural or historical property and facilities, including any work relating to providing access thereto for persons with disabilities. The term includes the acquisition of an interest in real property and includes the repair and replacement of fixtures.

“Commission” means the New Jersey Historical Commission established pursuant to N.J.S.18A:73-21 et seq.

“Council” means the New Jersey State Council on the Arts established pursuant to P.L.1966, c. 214 (C.52:16A-25 et seq.).

“Cultural Trust” means the New Jersey Cultural Trust established by section 4 of this act.

“Endowment” means a permanent fund, the principal of which is to remain intact in perpetuity and which is invested and held by or for the exclusive use of a qualified organization, and the income of which may be expended by the qualified organization for purposes consistent with its mission.

“Financial stabilization” means those enhancements to a qualified organization that build assets, reduce liabilities, aid cash flow, establish working capital and capital reserves, expand income, improve public access, build institutional capability and efficiency, or otherwise effect long-term improvement of a qualified organization’s financial ability to sustain itself and carry out its mission.

“Fiscal plan” means a document or documents detailing the policies, functions, workings, and strategies of the Cultural Trust for its operation in carrying out the purposes of this act, including all those applicable to the solicitation and receipt of public funds and private donations, the investment of the Trust Fund, and the distribution of funds.

“Historic Trust” means the New Jersey Historic Trust established pursuant to P.L.1967, c.124 (C.13:1B-15.111 et seq.).

“Performing, visual and creative arts” means performing and creative arts as defined in section 2 of P.L.1966, c.214 (C.52:16A-26).

“Preservation” means the stabilization, planning, repair, rehabilitation, renovation, restoration, improvement, or protection of any historic property, structure, facility, or site of a qualified organization, and includes any work related to providing access thereto for persons with disabilities.

“Project list” means a compilation of projects, their purposes, and amounts recommended for receipt of Cultural Trust moneys by the Council, Historic Trust, or Commission.

“Qualified organization” means a tax-exempt, nonprofit organization whose primary mission is to promote the performing, visual and creative arts in New Jersey or to promote or preserve history and humanities in New Jersey. The term shall not include private, State, county, or municipal colleges, and universities. The term shall not include State, county, or local governmental units, authorities or corporations created by such units, and shall not include a “qualifying governmental body” as defined in section 2 of P.L.1985, c.410 (C.52:16A-26.2).

“Trust Fund” means the permanent investment fund established by the Board of Trustees of the Cultural Trust as provided in section 8 of this act.

C.52:16A-75 "New Jersey Cultural Trust."

4. There is hereby established in but not of the Department of State a public body corporate and politic with corporate succession, to be known as the "New Jersey Cultural Trust." For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Cultural Trust is hereby allocated within the Department of State, but notwithstanding that allocation, the Cultural Trust shall be independent of any supervision or control by that department or by any board or officer thereof, except as provided in this act.

The Cultural Trust is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, no part of whose revenues shall accrue to the benefit of any individual, and the exercise by the Cultural Trust of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State. The statutory goals of the Cultural Trust shall include the support of the arts, history, and humanities by assisting in the funding of capital facilities projects and endowment development, and contributing to the institutional and financial stability of qualified organizations in New Jersey. Board members and staff of the Cultural Trust may also engage in fundraising activities to effectuate the purposes of this act.

C.52:16A-76 Board of Trustees.

5. a. The general responsibility for the proper oversight of the Cultural Trust shall be vested in a Board of Trustees, which shall possess the powers and duties specified in this act. The board shall consist of 15 voting members.

b. The Secretary of State, or a designee, the State Treasurer, or a designee, the chair of the New Jersey State Council on the Arts, or a designee, the chair of the New Jersey Historic Trust, or a designee, and the chair of the New Jersey Historical Commission, or a designee, shall serve as ex-officio members of the board.

c. Two public members, who are not of the same political party, shall be appointed by the Governor upon the recommendation of the President of the Senate, and two public members, who are not of the same political party, shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly. These public members shall serve for terms coextensive with the legislative term in which they are appointed, subject to reappointment after the expiration of the legislative term.

d. Six public members shall be appointed by the Governor with the advice and consent of the Senate. The term of office of each public member appointed pursuant to this subsection shall be five years, except for the initial appointments, which shall be made as follows: two members shall be appointed for a three-year term, two members shall be appointed for a four-year term, and two members shall be appointed for a five-year term.

e. No public member of the board appointed under subsections c. and d. of this section shall serve concurrently on the New Jersey Historical Commission, New Jersey State Council on the Arts, or the board of the New Jersey Historic Trust.

f. The Governor, for cause, upon notice and opportunity to be heard, may remove a public member of the board. A vacancy occurring among any of the public members, other than by expiration of term, shall be filled for the balance of the unexpired term only and in the same manner as the original appointment. A member may serve until a successor is appointed and has qualified. No person appointed pursuant to subsection d. of this section shall serve for more than two successive terms, provided, however, that any person appointed to fill a vacancy shall be eligible for two successive terms excluding the unexpired term.

g. The public members of the board shall serve without compensation, but shall be entitled to reimbursement for all actual and necessary expenses incurred in the performance of their duties.

h. Annually, at the first meeting of the board held in each State fiscal year, the members of the board shall elect one of the public members to serve as chair of the board. Under regulations adopted by the board, the board may establish an executive committee composed of no fewer than three board members, which committee may exercise powers vested in and perform duties imposed upon the board to the extent designated and permitted by the board. The board may establish such advisory boards and committees as it may deem advisable.

i. Members and employees of the board shall be subject to the provisions of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.).

j. A majority of the authorized membership of the board shall constitute a quorum for all purposes provided, however, that at least one member of the quorum is a member pursuant to subsection b. of this section or a designee of that member. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform the duties of the board.

k. A true copy of the minutes of every meeting of the board or the executive committee shall be delivered promptly, after the certification of the chair thereof, to the Governor. No action taken at a meeting by the board or the executive committee shall have effect until approved by the Governor or until 10 days after the copy of the minutes shall have been delivered. If, within the 10-day period, the Governor returns the copy of the minutes with a veto of any action taken by the board or the executive committee or any member thereof at a meeting, such action shall be null and void and of no effect. The Governor may approve all or part of the action taken at a meeting prior to the expiration of the 10-day period.

l. Any dissolution of the Cultural Trust shall be on the condition that the Cultural Trust has no debts, contractual duties or obligations outstanding, or that provision has been made for the payment, discharge, or retirement of any debts, contractual duties or obligations. Upon any dissolution of the Cultural Trust, all property, rights, funds, and assets thereof shall pass to and become vested in the State, and all moneys shall be used expressly for carrying out the purposes of this act.

m. The board shall receive from the Attorney General of the State all legal counsel and services necessary to carry out the purposes of the Cultural Trust.

C.52:16A-77 Authority, powers of board.

6. The board is hereby authorized and empowered:

a. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, to adopt, immediately upon filing with the Office of Administrative Law, such regulations as the board deems necessary to implement the provisions of this act, which regulations shall be effective for a period not to exceed 180 days from the date of the filing. Such regulations may thereafter be amended, adopted or readopted by the board as necessary in accordance with the requirements of P.L.1968, c.410. However, the board shall not have the power to design or specify the project lists of the Council, the Historic Trust, and the Commission provided for in sections 10, 11, and 12 of this act. These rights shall be held exclusively by the Council, the Historic Trust and the Commission, respectively;

b. To solicit, receive, and accept appropriations, gifts, donations, legacies, bequests, and

endowments from public or private sources for any purpose which falls within the purposes of the Cultural Trust. The Cultural Trust may not acquire, hold, receive, or accept any moneys or other property, real or personal, tangible or intangible, which will result in the incurrence of any financial obligations on the part of the State that cannot be supported entirely from funds available in the Trust Fund without the express approval of the State Treasurer in consultation with the Secretary of State;

c. To apply all moneys, assets, property, or other things of value it may receive as an incident to its operation to the general purpose of the Cultural Trust;

d. To cooperate with and assist and receive assistance from, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in the furtherance of the purposes of this act or of the Cultural Trust;

e. To evaluate and certify any and all donations made to the Cultural Trust or a qualified organization for purposes of the transfer of moneys from the Account to the Trust Fund pursuant to section 9 of this act;

f. To accept or reject any recommendation on a project list submitted solely by the Council, the Historic Trust, or the Commission that will support the financing of capital facilities projects or endowments, or contribute to the institutional and financial stability of qualified organizations. The board as a whole or any of its members may not recommend any project for funding that has not either received a restricted donation as set forth in section 9 of this act or been recommended for funding by the Council, the Historic Trust, or the Commission on a project list submitted pursuant to section 10, 11 or 12 of this act;

g. To consult with the Director of the Division of Investments in the Department of the Treasury and the State Treasurer regarding the investment strategies for the moneys in the Trust Fund established by the board pursuant to section 8 of this act;

h. To make and enter into any and all contracts and agreements for goods and services and to enter into any and all contracts and agreements or to execute any instrument with individuals, organizations, institutions, or public agencies for services or endeavors furthering the Cultural Trust;

i. To determine the portion of the interest generated by moneys in the Trust Fund that will be made available for distribution to qualified organizations, and to distribute these moneys as necessary and appropriate pursuant to sections 10, 11 and 12 of this act;

j. To prepare and implement a fiscal plan for the Cultural Trust;

k. To prepare and submit an annual funding request for an appropriation from the General Fund for the operational and administrative costs of the board and the Cultural Trust to the Governor through the Department of State and the Division of Budget and Accounting in the Department of the Treasury, and to expend or authorize the expenditure of moneys derived from such sources and funds as are appropriated by the Legislature to implement the provisions of this act;

l. To hire and employ such employees, in consultation with the Secretary of State, as may be necessary or desirable in its judgment to carry out the purposes of this act, to fix their compensation, and to promote and discharge said employees, without regard to the provisions of Title 11A of the Revised Statutes;

m. To sue and be sued in its own name, but the board members shall be held harmless for acts performed in good faith;

n. To adopt a seal and alter the same at its pleasure;

o. To maintain an office or offices at such a place or places within the State as the Secretary of State may designate;

p. To sell, convert, assign, develop, or otherwise dispose of any and all necessary assets or property donated to the Cultural Trust, as needed, for the purposes of this act. Any moneys gained by the sale of these assets or property shall be deposited into the Trust Fund;

q. To develop in its regulations a process for appealing a decision by the board; and

r. To do all acts and things necessary, incidental, convenient, or desirable to carry out the powers granted in this act.

C.52:16A-78 Annual report on activities of the Cultural Trust.

7. On or before the first day of October in each year, commencing with the calendar year after the date of enactment of this act, the board shall submit an annual report of the activities of the Cultural Trust for the preceding State fiscal year to the Governor and to the Legislature. The annual report shall set forth a complete operating and financial statement covering the operations of the Cultural Trust during the year, a long-range fiscal plan for the next five years, and a more specific short-range fiscal plan for the fiscal year in which the annual report is delivered with respect to providing the funding necessary to achieve the goals and objectives of this act, and a summary of the progress made to date on achieving those goals and objectives. The board shall cause an audit of its records and accounts to be made at least once in each year by independent certified public accountants, and the cost thereof shall be considered an expense of the Cultural Trust and a copy thereof shall be filed with the Director of the Division of Budget and Accounting.

C.52:16A-79 "New Jersey Cultural Trust Account;" "New Jersey Cultural Trust Fund."

8. a. There is established in the General Fund a special, dedicated, non-lapsing account to be known as the "New Jersey Cultural Trust Account." The State Treasurer shall credit to the Account in each State fiscal year beginning in State fiscal year 2001 through and including State fiscal year 2010 an amount not less than \$10,000,000. The amount credited to the Account shall be subject to annual State appropriation and shall be appropriated only for the purposes set forth in this act.

b. (1) The board shall establish a permanent, interest-bearing investment trust fund to be known as the "New Jersey Cultural Trust Fund," into which public funds and private donations and transfers from the Account shall be deposited and from which matching funds for large gift donations may be disbursed for endowments and from which interest income may be distributed, as provided in this act.

(2) Moneys deposited in the Trust Fund shall be held in investment accounts in public depositories as defined pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and shall be invested or reinvested in a manner approved by the Director of the Division of Investment and the State Treasurer in consultation with the board. Interest or other income earned on moneys deposited in the Trust Fund, and any moneys which may otherwise become available for the purposes of the Cultural Trust, shall be for the use of the Cultural Trust, as set forth in this act.

c. (1) For State fiscal year 2001 through and including State fiscal year 2010, the State Treasurer shall transfer money from the Account to the Trust Fund based upon donations to the Cultural Trust and to qualified organizations, as determined in section 9 of this act. The State Treasurer shall transfer to the Trust Fund an amount equal to the amount of the donations, subject to the availability of moneys in the Account.

(2) None of the interest derived from the moneys held in the Trust Fund shall be disbursed to qualified organizations by the board until the Trust Fund has received donations and transfers totaling not less than \$20,000,000, or one year from the effective date of this act, whichever occurs later. However, nothing in this paragraph shall prohibit the board from disbursing moneys from the Trust Fund pursuant to section 9 of this act prior to the Trust Fund reaching \$20,000,000.

(3) The disbursement from the Trust Fund to a qualified organization receiving a large gift donation as provided in paragraph (2) of subsection b. of section 9 of this act shall be made by resolution adopted by a majority of the authorized membership of the board specifying the particular endowment or endowments to be funded by those moneys. However, the aggregate of such disbursements shall not exceed 20 percent of the amount in the Trust Fund in any one fiscal year.

(4) The portion of interest moneys generated from the Trust Fund, and determined available for disbursement by the board, shall be allocated as follows: 50 percent to the Council's recommendations; 25 percent to the Historic Trust's recommendations; and 25 percent to the Commission's recommendations. Of the portion of interest moneys generated from the Trust Fund and determined available for disbursement by the board, at least 25 percent shall be allocated to projects of qualified organizations that directly benefit the residents of Southern New Jersey.

(5) An affirmative vote by 10 or more members of the board may alter the allocation to the Council, Historic Trust, and Commission, but not the allocation to projects of qualified organizations that directly benefit the residents of Southern New Jersey, of the portion of interest moneys generated, as identified in paragraph (4) of this subsection, for a period of one State fiscal year. Upon the completion of that fiscal year, the allocation shall revert back to the percentages enumerated in paragraph (4) of this subsection.

(6) All property of the Cultural Trust is declared to be public property devoted to an essential public and governmental function and purpose, and the Cultural Trust shall be exempt from all taxes and special assessments of the State or any political subdivision thereof.

(7) For the purposes of efficiency and convenience, nothing in this act shall prohibit the board from combining the project lists, in whole or in part, of the Council, the Historic Trust, or the Commission into one proposed resolution to be considered by the board.

(8) To the extent moneys are or may become available as a result of project withdrawals, cancellations, lack of funding, or other such financial matters, the unexpended balances of the amounts disbursed shall revert to the Trust Fund.

d. In the event that any donation or donations exceed the amount credited to the Account in any given State fiscal year, the credit for the donation or donations may be carried forward and used to transfer moneys into the Trust Fund, subject to annual State appropriation to the Account.

e. If the Cultural Trust does not receive annual donations equaling the amount annually credited to the Account, the State Treasurer shall carry forward in the Account all remaining appropriations, for each State fiscal year. The State Treasurer shall transfer any carried forward funds in the Account to the Trust Fund should sufficient donations be made to warrant the transfer of these funds pursuant to section 9 of this act.

C.52:16A-80 Donations to Cultural Trust, matching State appropriation.

9. Donations to the Cultural Trust shall initiate the transfer of a dollar-for-dollar match of State appropriated moneys from the Account into the Trust Fund. For the purposes of this act, a donation shall be:

a. an unrestricted donation which is money, property or other object of value given directly to the Cultural Trust but not dedicated for use by a specific qualified organization. Once an unrestricted donation has been certified by the board to the Trust Fund, the State Treasurer shall transfer from the Account to the Trust Fund an amount equal to the unrestricted donation.

b. (1) a restricted donation which is money, property, or other object with monetary value given directly to a qualified organization that is expressly dedicated for endowment. The State Treasurer shall transfer from the Account to the Trust Fund an amount equal to the restricted donation once (a) the board approves a letter of donation or intent to donate, designating the amount of the donation and the name of the financial institution from which the moneys were allocated, with the account number, or a certified appraisal, deed, or other appropriate documentation in the case of property, (b) the board is provided with the name of the qualified organization to which the donation was made and a certification from that qualified organization that the donation was in fact received by the qualified organization, and (c) the board determines and certifies to the State Treasurer that the donation is consistent with the purposes of this act. A restricted donation given directly to a qualified organization on or after January 1, 2000 but before the effective date of this act may be considered a restricted donation for the purposes of this act and shall result in a transfer from the Account to the Trust Fund at such time as may be appropriate provided the requirements of this act are met.

(2) When a restricted donation is equal to or greater than \$100,000, the donation shall be considered a large gift donation and the board shall disburse to the qualified organization receiving the donation from the matched funds transferred from the Account to the Trust Fund an amount equal to 20 percent of the donation pursuant to the procedure set forth in paragraph (3) of subsection c. of section 8 of this act.

C.52:16A-81 Council's recommendations for funding.

10. At least once each State fiscal year after the board has determined that sufficient interest

has accrued to provide grants to qualified organizations, the Council shall submit to the board a list of capital facilities, endowment, and financial stabilization projects which the Council recommends to receive funding from the Trust Fund, based upon a priority system, ranking criteria, and funding policies established by the Council pursuant to this act and P.L.1966, c.214 (C.52:16A-25 et seq.) and any rules or regulations adopted pursuant thereto. The board shall review the list and may make such deletions, but not additions, of projects therefrom as it deems appropriate and in accordance with the procedures established by the board for such deletions pursuant to this act, whereupon the board shall approve the list. This approved project list shall receive moneys from the Cultural Trust for the purposes of effectuating this act.

C.52:16A-82 Historic Trust's recommendations for funding.

11. At least once each State fiscal year after the board has determined that sufficient interest has accrued to provide grants to qualified organizations, the Historic Trust shall submit to the board a list of capital facilities projects that the Historic Trust recommends to receive funding from the Trust Fund, based upon a priority system, ranking criteria, and funding policies established by the Historic Trust pursuant to this act and P.L.1967, c.124 (C.13:1B-15.111 et seq.), and any rules or regulations adopted pursuant thereto. The board shall review the list and may make such deletions, but not additions, of projects therefrom as it deems appropriate and in accordance with the procedures established by the board for such deletions pursuant to this act, whereupon the board shall approve the list. This approved project list shall receive moneys from the Cultural Trust for the purposes of effectuating this act.

C.52:16A-83 Commission's recommendations for funding.

12. At least once each State fiscal year after the board has determined that sufficient interest has accrued to provide grants to qualified organizations, the Commission shall submit to the board a list of endowment and financial stabilization projects that the Commission recommends to receive funding from the Trust Fund, based upon a priority system, ranking criteria, and funding policies established by the Commission pursuant to this act and N.J.S.18A:73-21 et seq. any rules or regulations adopted pursuant thereto. The board shall review the list and may make such deletions, but not additions, of projects therefrom as it deems appropriate and in accordance with the procedures established by the board for such deletions pursuant to this act, whereupon the board shall approve the list. This approved project list shall receive moneys from the Cultural Trust for the purposes of effectuating this act.

C.52:16A-84 Obligations of recipients.

13. a. All qualified organizations receiving moneys from the Cultural Trust pursuant to this act shall enter into an agreement with the board, which shall provide for monitoring the allocation and use of moneys to ensure that such moneys are held and used consistent with the purposes of this act.

b. As determined by the board, the qualified organizations in receipt of moneys from the Trust Fund shall report to the board on its activities, financial status, and use of the moneys disbursed to it by the board.

C.52:16A-85 Regulations, annual funding request.

14. a. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Council, the Historic Trust, and the Commission may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the Council, the Historic Trust, and the Commission deem necessary to implement the provisions of this act which regulations shall be effective for a period not to exceed 180 days from the date of the filing. Such regulations may thereafter be amended, adopted or readopted by the Council, the Historic Trust, and the Commission as necessary in accordance with the requirements of P.L.1968, c.410.

b. The Council, the Historic Trust, and the Commission shall prepare and submit an annual funding request to the Governor through the Department of State and the Division of Budget and Accounting in the Department of the Treasury to carry out the purposes of this act.

15. This act shall take effect immediately.

Approved July 25, 2000.