

CHAPTER 173

AN ACT concerning the use of county and municipal open space trust funds for the purchase of flood-prone properties, and amending P.L.1992, c.157 and P.L.1997, c.24.

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

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

C.40:12-15.1 Definitions relative to recreation, conservation, floodplain protection, farmland, and historic preservation.

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

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

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

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

"County trust fund" means a "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 2 of P.L.1997, c.24 (C.40:12-15.2).

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

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

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

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

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

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

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

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

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

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

C.40:12-15.2 Submission by county of proposition authorizing annual levy.

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

- (a) acquisition of lands for recreation and conservation purposes;
- (b) development of lands acquired for recreation and conservation purposes;
- (c) maintenance of lands acquired for recreation and conservation purposes;
- (d) acquisition of farmland for farmland preservation purposes;

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

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

- (g) Blue Acres projects.

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

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

c. Amounts raised by the levy imposed pursuant to this section shall be deposited into a "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" to be created by the county, and shall be used exclusively for the purposes authorized by the voters of the county. Any interest or other income earned on monies deposited into the county trust fund shall be credited to the fund to be used for the same purposes as the principal. Separate accounts may be created within the county trust fund for the deposit of revenue to be expended for each of the purposes specified in the proposition approved by the voters of the county. A county may deposit other funds into the County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund, as it may, from time to time, deem appropriate.

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

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

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

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

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

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

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

3. Section 3 of P.L.1997, c.24 (C.40:12-15.3) is amended to read as follows:

C.40:12-15.3 Propositions deemed approved by voters of county.

3. a. Any county whose voters, prior to the effective date of P.L.1997, c.24 (C.40:12-15.1 et seq.), approved pursuant to P.L.1989, c.30 (C.40:12-16 et seq.) a proposition authorizing the acquisition of lands for conservation as open space or as farmland shall be deemed to have approved a proposition for the purposes specified in paragraph (1) of subsection a. of section 2 of P.L.1997, c.24 (C.40:12-15.2), but excluding the purpose specified in subparagraph (c) of that paragraph if the proposition was approved prior to the 24 months immediately preceding the effective date of P.L.1997, c.24 (C.40:12-15.1 et seq.), at the amount or rate specified in the original proposition, which purposes shall be determined by adoption of a resolution or ordinance, as appropriate, by the governing body of the county after conducting at least one public hearing thereon and subject to the requirements of subsections b., c. and d. of this section. The county open space and farmland preservation trust fund created for the purposes of P.L.1989, c.30 (C.40:12-16 et seq.) shall be dissolved and any monies remaining therein shall be deposited into the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund"

created pursuant to subsection c. of section 2 of P.L.1997, c.24 to be utilized for the purposes determined by the governing body of the county as authorized pursuant to this subsection.

b. A county shall not expend more than \$100,000 for any proposed project or use to be undertaken pursuant to a resolution or ordinance adopted pursuant to subsection a. of this section authorizing a purpose specified in subparagraph (b), (c), or (f) of paragraph (1) of subsection a. of section 2 of P.L.1997, c.24, unless the governing body of the county first conducts a public hearing on the proposed project or use and adopts a resolution or ordinance, as appropriate, authorizing the expenditure. Any public hearing required pursuant to this subsection shall be held at least 45 days before the governing body of the county takes action to adopt the resolution or ordinance authorizing the expenditure.

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

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

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

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

e. Any county whose voters, prior to the effective date of P.L.1997, c.24 (C.40:12-15.1 et seq.), approved pursuant to R.S.40:12-10 et seq. a proposition authorizing the establishment, maintenance, and improvement of a system of public recreation shall be deemed to have approved a proposition for any or all of the purposes specified in paragraph (1) of subsection a. of section 2 of P.L.1997, c.24 (C.40:12-15.2) at the amount or rate specified in the original proposition, which purposes shall be determined by adoption of a resolution or ordinance, as appropriate, by the governing body of the county after conducting at least one public hearing thereon. Any fund created for the purposes of R.S.40:12-10 et seq. shall be dissolved and any monies remaining therein shall be deposited into the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 2 of P.L.1997, c.24 to be utilized for the purposes determined by the governing body of the county as authorized pursuant to this subsection.

4. Section 4 of P.L.1997, c.24 (C.40:12-15.4) is amended to read as follows:

C.40:12-15.4 Lands acquired by county held in trust.

4. Lands acquired by a county using revenue raised pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) shall be held in trust and shall be used exclusively for the purposes authorized under P.L.1997, c.24.

After conducting at least one public hearing thereon and upon a finding that the purposes of P.L.1997, c.24 might otherwise be better served or that any land acquired by a county pursuant thereto is required for another public use, which finding shall be set forth in a resolution or ordinance, as appropriate, adopted by the governing body of the county, the governing body may convey, through sale, exchange, transfer, or other disposition, title to, or a lesser interest in, that land, provided that the governing body shall replace any land conveyed under this section by land of at least equal fair market value and of reasonably equivalent usefulness, size, quality, and location to the land conveyed, and any monies derived from the conveyance shall be deposited into the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 2 of P.L.1997, c.24 (C.40:12-15.2) for use for the purposes authorized by P.L.1997, c.24 (C.40:12-15.1 et seq.) for monies in the county trust fund. Any such conveyance shall be made in accordance with the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange, the land or improvements thereon to be transferred to the trust shall be at least equal in fair market value and of reasonably equivalent usefulness, size, quality, and location to the land or improvements transferred from the trust.

5. Section 5 of P.L.1997, c.24 (C.40:12-15.5) is amended to read as follows:

C.40:12-15.5 Apportionment by county of amounts raised by taxation.

5. Amounts raised by taxation for the purposes of P.L.1997, c.24 (C.40:12-15.1 et seq.) shall be apportioned by the county board of taxation among the municipalities within the county in accordance with R.S.54:4-49. The amounts so apportioned shall be assessed, levied and collected in the same manner and at the same time as other county taxes. The tax collected pursuant to P.L.1997, c.24 shall be referred to as the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Tax."

6. Section 6 of P.L.1997, c.24 (C.40:12-15.6) is amended to read as follows:

C.40:12-15.6 Adoption by county of resolution authorizing distribution of monies.

6. a. The governing body of any county in which the voters of the county have approved a proposition in accordance with P.L.1997, c.24 (C.40:12-15.1 et seq.) may adopt a resolution authorizing the distribution of monies deposited into the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 2 of P.L.1997, c.24 (C.40:12-15.2), in such portions as deemed appropriate, to municipalities within the county or to charitable conservancies, to be used in the county by those municipalities or charitable conservancies for the purposes of P.L.1997, c.24 in accordance with the provisions, conditions, and requirements thereof, provided that any municipality or charitable conservancy receiving such monies has presented a plan to the county documenting the proposed use of the monies.

b. Lands acquired by a municipality pursuant to this section shall be held in trust and shall be used exclusively for the purposes authorized by P.L.1997, c.24.

c. The governing body of a municipality acquiring lands using monies received pursuant to this section shall have full control of the lands and may adopt an ordinance providing for

(1) suitable rules, regulations, and bylaws for use of the lands, (2) the enforcement of those rules, regulations and bylaws, and (3) when appropriate, the charging and collection of reasonable fees for use of the lands or for activities conducted thereon.

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

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

(2) agree to use the monies only in connection with lands located in the county and for the purposes authorized by P.L.1997, c.24;

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

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

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

7. Section 7 of P.L.1997, c.24 (C.40:12-15.7) is amended to read as follows:

C.40:12-15.7 Submission by municipality of proposition authorizing annual levy.

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

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

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

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

(d) acquisition of farmland for farmland preservation purposes;

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

(f) payment of debt service on indebtedness issued or incurred by a municipality for any of the purposes set forth in subparagraph (a), (b), (d), (e) or (g) of this paragraph; or

(g) Blue Acres projects.

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

b. Upon approval of the proposition by a majority of the votes cast by the voters of the municipality, the governing body of the municipality may annually raise by taxation a sum not to exceed the amount or rate set forth in the proposition approved by the voters for the

purposes specified therein. If the amount or rate set forth in the proposition was not subdivided among the various purposes, the governing body of the municipality may determine the appropriate amount or rate to be allocated to each purpose after conducting at least one public hearing thereon.

c. Amounts raised by the levy imposed pursuant to this section shall be deposited into a "Municipal Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" to be created by the municipality, and shall be used exclusively for the purposes authorized by the voters of the municipality. Any interest or other income earned on monies deposited into the municipal trust fund shall be credited to the fund to be used for the same purposes as the principal. Separate accounts may be created within the municipal trust fund for the deposit of revenue to be expended for each of the purposes specified in the proposition approved by the voters of the municipality. A municipality may deposit other funds into the Municipal Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund, as it may, from time to time, deem appropriate.

d. The governing body of a municipality may submit to the voters of the municipality in a general or special election a proposition amending or supplementing a proposition previously submitted, approved, and implemented as provided pursuant to this section either (1) changing the amount or rate of the annual levy, or (2) adding or removing purposes authorized pursuant to this section for which the levy may be expended. Upon approval of the amendatory or supplementary proposition by a majority of the votes cast by the voters of the municipality, the governing body of the municipality shall implement it in the same manner as set forth in P.L.1997, c.24 for implementation of the original proposition.

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

8. Section 8 of P.L.1997, c.24 (C.40:12-15.8) is amended to read as follows:

C.40:12-15.8 Propositions deemed approved by voters of municipality.

8. Any municipality whose voters, prior to the effective date of P.L.1997, c.24 (C.40:12-15.1 et seq.), approved pursuant to R.S.40:12-10 et seq. a proposition authorizing the establishment, maintenance, and improvement of a system of public recreation shall be deemed to have approved a proposition for any or all of the purposes specified in paragraph (1) of subsection a. of section 7 of P.L.1997, c.24 (C.40:12-15.7) at the amount or rate specified in the original proposition, which purposes shall be determined by adoption of an ordinance by the governing body of the municipality after conducting at least one public hearing thereon. Any fund created for the purposes of R.S.40:12-10 et seq. shall be dissolved and any monies remaining therein shall be deposited into the "Municipal Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 7 of P.L.1997, c.24 (C.40:12-15.7) to be utilized for the purposes determined by the governing body of the municipality as authorized pursuant to this section.

9. Section 9 of P.L.1997, c.24 (C.40:12-15.9) is amended to read as follows:

C.40:12-15.9 Lands acquired by municipality held in trust.

9. Lands acquired by a municipality using revenue raised pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) shall be held in trust and shall be used exclusively for the purposes authorized under P.L.1997, c.24.

After conducting at least one public hearing thereon and upon a finding that the purposes of P.L.1997, c.24 might otherwise be better served or that any land acquired by a municipality pursuant thereto is required for another public use, which finding shall be set forth in an ordinance adopted by the governing body of the municipality, the governing body may convey, through sale, exchange, transfer, or other disposition, title to, or a lesser interest in, that land, provided that the governing body shall replace any land conveyed under this section by land of at least equal fair market value and of reasonably equivalent usefulness, size, quality, and location to the land conveyed, and any monies derived from the conveyance shall be deposited into the "Municipal Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 7 of P.L.1997, c.24 (C.40:12-15.7) for use for the purposes authorized by P.L.1997, c.24 for monies in the municipal trust fund. Any such conveyance shall be made in accordance with the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.). In the event of conveyance by exchange, the land or improvements thereon to be transferred to the trust shall be at least equal in fair market value and of reasonably equivalent usefulness, size, quality, and location to the land or improvements transferred from the trust.

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

C.40:12-16.1 Adoption of prioritized list of eligible farmland.

7. The county agriculture development board of a county in which the voters of the county have approved, in a general or special election, a proposition authorizing the acquisition of lands for farmland preservation purposes pursuant to P.L.1989, c.30 (C.40:12-16 et seq.) or P.L.1997, c.24 (C.40:12-15.1 et seq.) shall, pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), adopt a prioritized list of farmland eligible for acquisition of development easements thereon by installment purchase agreements pursuant to the provisions of P.L.1992, c.157 (C.40:12-16.1 et al.) if the county intends to acquire development easements on farmland in that manner. The governing body of the county shall annually appropriate from the "County Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund" created pursuant to subsection c. of section 2 of P.L.1997, c.24 (C.40:12-15.2) such amounts as it may deem necessary to finance the acquisition of development easements on farmland within that county by installment purchase agreement.

11. This act shall take effect immediately.

Approved January 5, 2012.