

CHAPTER 104

AN ACT concerning inclusive playgrounds and designated as Jake's Law and amending and supplementing various parts of the statutory law.

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

1. R.S.40:12-9 is amended to read as follows:

Joint actions.

40:12-9. Any two or more municipalities in any county, any municipality and the coterminous school district, any municipality and county, or any municipality and county park commission may jointly acquire property for, or improve, operate, and maintain on existing property, any playgrounds, completely inclusive playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, and may appropriate money therefor. The municipality may pay over to the board of education of the school district any money as may be so appropriated to be disbursed by the board of education for any of these joint purposes. The county or county park commission may pay over to the municipality any money as may be so appropriated to be disbursed by the county or county park commission for any of these joint purposes.

2. Section 1 of P.L.1999, c.50 (C.52:27D-123.9) is amended to read as follows:

C.52:27D-123.9 Definitions relative to playground safety.

1. For the purposes of P.L.1999, c.50 (C.52:27D-123.9 et seq.):

"Completely inclusive playground" means a playground designated for public use for children two to five years of age or five to twelve years of age, with an accessible playground surface, a playground surface inspection and maintenance schedule consistent with the standards detailed in the "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), and designed in accordance with the rules and regulations adopted pursuant to subsection b. of section 2 of P.L.1999, c.50 (C.52:27D-123.10).

"Governmental Entity" means the State, its agencies and instrumentalities, a county or municipality, or any agency or instrumentality thereof, a school district, or any other similar public entity or agency, but not the federal government or its agencies and instrumentalities.

"Nonprofit entity" means a person or entity which operates a playground open to the public or open to users of a facility operated by the person or entity, and which is an exempt organization pursuant to section 9 of P.L.1966, c.30 (C.54:32B-9), the "Sales and Use Tax Act," but not a governmental entity or the federal government or its agencies and instrumentalities.

"Private entity" means any person or entity which operates a playground open to the public or open to users of a facility operated by the person or entity, but not a governmental entity, a nonprofit entity or the federal government or its agencies and instrumentalities.

"Playground" means an improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

"Supervision" means all general and specific supervision necessary to protect children from unreasonable risk of harm from site hazards, the acts of other children, or the use of the playground in a way that was not intended by the designer or manager of the playground. P.L.1999, c.50 (C.52:27D-123.9 et seq.) shall not expand or reduce existing standards of care to which a playground operator is held.

3. Section 2 of P.L.1999, c.50 (C.52:27D-123.10) is amended to read as follows:

C.52:27D-123.10 Rules, regulations pertinent to playgrounds.

2. a. The Department of Community Affairs, in consultation with the Department of Education, shall promulgate rules and regulations for the design, installation, inspection, and maintenance regarding all playgrounds operated by any governmental entity, nonprofit entity, or private entity. The regulations shall conform to the guidelines and criteria specified in the Handbook for Public Playground Safety produced by the United States Consumer Products Safety Commission or any successor and shall also meet any standard of care imposed by law on playground operators. The rules and regulations shall include special provisions for playgrounds appropriate for children within the range of ages in day care settings. The rules and regulations promulgated pursuant to this subsection shall not apply to completely inclusive playgrounds.

b. (1) The Department of Community Affairs, in consultation with the Department of Education, shall promulgate rules and regulations for the design, installation, inspection, and maintenance of completely inclusive playgrounds. Only playgrounds that meet the requirements of the rules and regulations promulgated pursuant to this subsection shall be deemed completely inclusive playgrounds for the purposes of P.L.2018, c.104 (C.13:8C-27.1 et al.). The rules and regulations shall:

(a) conform to the guidelines and criteria which are contained in the Handbook for Public Playground Safety produced by the United States Consumer Products Safety Commission or any successor, and meet any standard of care imposed by law on playground operators;

(b) include special provisions for completely inclusive playgrounds appropriate for children within the range of ages in day care settings;

(c) meet the standards of the "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), result in the inclusion of people with disabilities, including children and adults, and require that park and playground areas enable every visitor, regardless of medical condition, to engage in the park and playground experience;

(d) meet the standards required under the barrier free subcode, adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.); and

(e) at a minimum, require accessible playground surfacing, access ramps leading up to and within play structures so that a minimum of 50 percent of the elevated play elements on all structures are accessible to people using wheeled mobility devices, and play structures designed to facilitate access by adults and children with disabilities.

(2) The rules and regulations promulgated pursuant to this subsection shall also include, but shall not be limited to, the following:

(a) the creation of accessible parking, including the installation of a curb cut, if only on-street parking is available;

(b) the creation of routes of access to playground and related facilities;

(c) the use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices;

(d) a process for determining which restroom facilities shall be adapted to ensure that families with older children or children with large adaptive equipment have a safe place to provide toileting needs for their children;

(e) shade requirements, which shall provide that a minimum of 20 percent of the square footage of unitary surface and equipment of the playground is shaded by natural or other means;

(f) fencing requirements;

(g) the use of play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs of those who will visit the playground;

(h) the creation of quiet play areas; and

(i) the creation of ramps and transfer points on playground equipment.

(3) A playground that has been completed as of the effective date of P.L.2018, c.104 (C.13:8C-27.1 et al.) may qualify as a completely inclusive playground if it includes unitary surfacing and fencing, at least 50 percent elevated play elements or changes in topographical elevations that function as elevated play elements, and otherwise meets the standards required by the "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.).

(4) Within 90 days of the effective date of P.L.2018, c.104 (C.13:8C-27.1 et al.), and prior to proposing a rule in the New Jersey Register, the Commissioner of Community Affairs shall invite and receive recommendations regarding the adoption of rules and regulations making completely inclusive playgrounds available to persons of all ages and abilities from organizations, playground equipment manufacturers, playground safety consultants, and persons with disabilities with a demonstrated expertise in the design and construction of completely inclusive playgrounds or with a demonstrated expertise in the implementation of accessibility standards. The commissioner shall adopt the recommendations, unless the commissioner determines the recommendations are inconsistent with the intent and purpose of P.L.2018, c.104 (C.13:8C-27.1 et al.), or are otherwise unfeasible. A recommendation shall not be considered unfeasible if it is demonstrated that the recommendation may be implemented through the use of commercially available equipment. The rules and regulations required by this subsection shall be proposed within 180 days of the effective date of P.L.2018, c.104 (C.13:8C-27.1 et al.), and shall be adopted within one year of the effective date of P.L.2018, c.104 (C.13:8C-27.1 et al.).

c. The department shall not be responsible for enforcement of any rules or regulations promulgated by P.L.1999, c.50 (C.52:27D-123.9 et seq.), unless the department is otherwise responsible for enforcement pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.).

C.13:8C-27.1 Definitions relative to completely inclusive playgrounds.

4. a. As used in this section:

"Commissioner" means the Commissioner of Environmental Protection.

"Completely inclusive playground" means a playground designated for public use for children two to five years of age or five to twelve years of age, with an accessible playground surface, a playground surface inspection and maintenance schedule consistent with the standards detailed in the "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), and designed in accordance with the rules and regulations adopted pursuant to subsection b. of section 2 of P.L.1999, c.50 (C.52:27D-123.10).

"Constitutionally dedicated moneys" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Green Acres bond act" means: P.L.1961, c.46; P.L.1971, c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265; P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; P.L.2007, c.119; P.L.2009, c.117; and any State general obligation bond act that may be approved after the date of enactment of P.L.2018, c.104 (C.13:8C-27.1 et al.) for the purpose of providing funding for the acquisition or development of lands for recreation and conservation purposes or for farmland preservation purposes.

"Green Acres funds" means constitutionally dedicated moneys, Green Acres bond act moneys, or other State moneys appropriated to acquire lands for recreation and conservation purposes.

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

b. Commencing one year after the effective date of P.L.2018, c.104 (C.13:8C-27.1 et al.), the commissioner shall prioritize any application submitted by a county seeking to acquire or develop lands for recreational and conservation purposes using Green Acres funds, provided that the Green Acres funds requested by the county are to be used for the design and construction of a completely inclusive playground. The commissioner shall grant further prioritization to the applications submitted by counties that do not currently operate and maintain a completely inclusive playground, to ensure at least one completely inclusive playground is operated and maintained by each county.

c. The board of chosen freeholders of any county or any county park commission may partner with nonprofit organizations, playground equipment manufacturers, playground safety consultants, and persons with disabilities with a demonstrated expertise in the design and construction of completely inclusive playgrounds, to assist with the design and construction of completely inclusive playgrounds. Any agreement entered into in accordance with this section shall not be subject to the requirements and provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

d. If the board of chosen freeholders of any county or any county park commission jointly enters into an agreement with a municipality pursuant to R.S.40:12-9 for the construction and maintenance of a completely inclusive playground, for purposes of the prioritization of an application submitted by a county pursuant to subsection b. of this section, a completely inclusive playground constructed and maintained pursuant to such an agreement shall be operated and maintained by the county in which it is located.

C.40:12-30 County receiving funding required to create completely inclusive playground.

5. In the event that State funds are made available to counties for the purpose of constructing completely inclusive playgrounds, as defined in section 1 of P.L.1999, c.50 (C.52:27D-123.9), every county receiving funding shall be required to construct and maintain at least one completely inclusive playground designed in accordance with the rules and regulations adopted pursuant to subsection b. of section 2 of P.L.1999, c.50 (C.52:27D-123.10). The board of chosen freeholders of any county or any county park commission may partner with organizations, playground equipment manufacturers, playground safety consultants, and persons with disabilities, with a demonstrated expertise in the design and construction of completely inclusive playgrounds, to assist with the design and construction of completely inclusive playgrounds. Any agreement entered into in accordance with this section shall not be subject to the requirements and provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

6. This act shall take effect immediately.

Approved August 23, 2018.