

LEGISLATIVE HISTORY CHECKLIST

18A: 65-33.2

NJSA: 18A: 65-33.2

(Rutgers--  
conveyances of  
land--require  
consideration by  
State House  
Commission)

LAWS OF: 1988

CHAPTER: 180

Bill No: S2100

Sponsor(s): Haines

Date Introduced: February 22, 1988

Committee: Assembly: -----

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks.  
According to Governor's recommendations.

Date of Passage: Assembly: June 23, 1988 Re-enacted 12-19-88

Senate: June 20, 1988 Re-enacted 12-8-88

Date of Approval: December 29, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes 5-19-88 & 3-21-88

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

Rutgers v. Piluso, 60 NJ 142 (1972)

[SECOND REPRINT]

SENATE, No. 2100

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1988

By Senators HAINES, ZANE, DUMONT, EWING and RAND

1 AN ACT concerning conveyances of undeveloped real property  
located at Rutgers, The State University and the preservation  
3 of open space in New Jersey and supplementing chapter 65 of  
Title 18A of the New Jersey Statutes <sup>1</sup>[and chapter 20 of Title  
5 52 of the Revised Statutes]<sup>1</sup>.

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

9 1. The Legislature finds and declares that the land owned or  
operated by Rutgers, the State University, in central New Jersey  
11 represents one of the few significant parcels of undeveloped land  
in a region experiencing extraordinary development pressures;  
13 <sup>1</sup>[that the administration of Rutgers, the State University, seems  
unable to resist the temptation to cash in on the development  
15 pressure; that the short-sighted trade of this irreplaceable land for  
money depletes an invaluable State resource and is contrary to  
17 the public interest;]<sup>1</sup> that Rutgers as the State university bears a  
special responsibility to the people and the interests of New  
19 Jersey; <sup>1</sup>[that in both the proposed trade of Cook College land in  
the U.S. Route 1 corridor and the current proposal for high  
21 density residential development on ecologically sensitive land in  
Highland Park and Piscataway, the University has shown an  
23 arrogant and insensitive disregard for public opinion; and that  
given Rutgers' past and present behavior on land development  
25 matters] and that<sup>1</sup> it is imperative that public policy decisions  
that will shape the face of New Jersey for centuries be made <sup>1</sup>[by  
27 officials]<sup>1</sup> with a commitment to the overall interests of the  
State and its people.

29 2. Whenever the Board of Governors of Rutgers, the State  
University intends to sell, exchange, lease or dispose of, or  
31 otherwise convey any interest, legal or equitable, in

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SJU committee amendments adopted May 19, 1988.

<sup>2</sup> Senate amendments adopted in accordance with Governor's  
recommendations October 24, 1988.

1 undeveloped real property held by the university or held by the  
2 State and in the custody of the university, the board shall, not  
3 less than six months prior to the intended conveyance, provide  
4 written notice of intent to the <sup>1</sup>[State House Commission,  
5 established pursuant to chapter 20 of Title 52 of the Revised  
6 Statutes] Governor<sup>1</sup>, the Senate Revenue, Finance and  
7 Appropriations Committee, or its successor, and the General  
8 Assembly Appropriations Committee, or its successor. <sup>2</sup>[Notice  
9 shall be provided in a manner and form to be established by the  
10 <sup>1</sup>[commission] Governor<sup>1</sup>.]<sup>2</sup>

11 3.<sup>2</sup>[a. <sup>1</sup>[Whenever the State House Commission receives  
12 notification,] At least] Within<sup>2</sup> sixty days <sup>2</sup>[prior to] after<sup>2</sup>  
13 providing notification<sup>1</sup> pursuant to section 2 of this act, of the  
14 intent to sell, lease or otherwise convey land <sup>1</sup>[by Rutgers, the  
15 State University the commission], the Board of Governors<sup>1</sup> shall  
16 conduct a public hearing<sup>1</sup>, not later than 60 days following  
17 receipt of notification, to consider whether the proposed  
18 conveyance is in the public interest] for the purpose of permitting  
19 the public to comment on the proposed conveyance<sup>1</sup>.

20 <sup>2</sup>[b. Within 60 days of <sup>1</sup>[the public hearing] receipt of  
21 notification pursuant to section 2 of this act<sup>1</sup>, the <sup>1</sup>[State House  
22 Commission] Governor<sup>1</sup> shall <sup>1</sup>[by a majority vote approve or  
23 disapprove] determine whether<sup>1</sup> the proposed conveyance of land  
24 <sup>1</sup>[based upon a determination of whether the conveyance]<sup>1</sup> serves  
25 the public interest. If the <sup>1</sup>[commission disapproves of the  
26 conveyance] Governor determines that the conveyance is not in  
27 the public interest<sup>1</sup>, the conveyance shall be prohibited, except in  
28 an instance in which <sup>1</sup>[that prohibition is determined by the  
29 Attorney General to] the Governor further determines, after  
30 consultation with the Attorney General, that prohibition would<sup>1</sup>  
31 be expressly contrary to the provisions of N.J.S. 18A:65-1 et seq.

32 c. If the university consummates a proposed land conveyance  
33 which is <sup>1</sup>[disapproved by the State House Commission pursuant  
34 to subsection b. of this section, but not prohibited because of a  
35 determination by the Attorney General] determined by the  
36 Governor not to be in the public interest but which cannot be  
37 prohibited because prohibition would be expressly contrary to the  
38 provisions of N.J.S. 18A:65-1 et seq.<sup>1</sup>, the State Auditor shall  
39 determine annually the value of the conveyance to the

1 university and certify to the State Treasurer, the Senate  
2 Revenue, Finance and Appropriations Committee or its successor  
3 and the General Assembly Appropriations Committee or its  
4 successor the total income which the university will realize in  
5 each fiscal year from disapproved land conveyances.]<sup>2</sup>

6 <sup>2</sup>[4. Annually, the State Treasurer shall transfer from the  
7 money appropriated for Rutgers, the State University to the fund  
8 established pursuant to the "New Jersey Green Acres Land  
9 Acquisition and Recreation Opportunities Act," P.L.1975, c.155  
10 (C.13:8A-35 et seq.), an amount equal to the amount certified by  
11 the State Auditor pursuant to subsection c. of section 3 of this  
12 act.]<sup>2</sup>

13 <sup>2</sup>[15.]<sup>4.2</sup> Notwithstanding any other law to the contrary and  
14 except with regard to facilities which are directly related to the  
15 provision of educational services, any development of real  
16 property held by the Board of Governors of Rutgers, the State  
17 University or held by the State and in the custody of the  
18 university, shall be subject to local land use planning and zoning  
19 requirements.<sup>1</sup>

20 <sup>2</sup>[<sup>1</sup>[5.]<sup>6.1</sup> <sup>5.2</sup> This act shall take effect immediately <sup>2</sup>[, and  
21 apply to any land conveyance not completed prior to February 1,  
22 1988]<sup>2</sup>.

23

24

#### LAND USE AND PLANNING

##### Higher Education

26

27 Requires that conveyances of land by Rutgers, the State  
28 University be considered by the Governor.  
29

## 1 SPONSOR'S STATEMENT

3 This bill establishes a mechanism to ensure that the lands of  
5 Rutgers. the State University may not be conveyed for  
7 development without a thorough review to protect the public  
9 interest. Under the bill, whenever Rutgers intends to sell or  
11 lease any of the land owned by the university or owned by the  
13 State and operated by the university, Rutgers must notify the  
State House Commission at least six months before the intended  
conveyance. The commission would hold a public hearing within  
60 days of notification, and by a majority vote approve or  
disapprove the land deal within 60 days of the hearing. A vote of  
disapproval would prohibit the conveyance in most instances.

The bill does recognize that the 1956 agreement between the  
State and the Boards of Trustees of the university may create  
special circumstances for certain university property. The bill  
provides a special procedure to be employed if, after a vote of  
disapproval, the Attorney General determines that for a  
particular land holding a prohibition of the conveyance by the  
State would expressly violate the 1956 agreement between the  
State and the trustees. Under that procedure, the State Auditor  
would annually determine and certify the income to Rutgers  
resulting from disapproved conveyances. Annually, the State  
Treasurer would transfer from the funds appropriated for Rutgers  
to the State's "Green Acres" fund an amount equal to the  
amount certified by the State Auditor. This transfer would  
guarantee that open space lost by the development of the Rutgers  
land could be offset by the purchase of open space for public use  
elsewhere.

The sponsor believes that, as our State university, Rutgers has  
a special responsibility to foster the public interest in the  
management of its land. However, Rutgers has demonstrated by  
its willingness to consider swapping Cook College lands along  
route 1 and by its current proposal for high density residential  
development in Piscataway and Highland Park an inability to  
resist the temptation of quick financial gain. The sponsor further  
believes that Rutgers' arrogant and insensitive disregard of  
public opinion and the public interest requires the creation of this  
new mechanism to protect the interests of the State and its  
people.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 2100**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 19, 1988

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2100.

The bill establishes procedures reviewing the transfer of land by Rutgers. As amended by the committee, whenever Rutgers intends to sell or lease any of the land owned by the university or owned by the State and operated by the university, Rutgers would be required to hold a public hearing on the proposed conveyance, and to notify the Governor's Office of the conveyance. The Governor would then have 60 days to determine whether the conveyance is in the public interest. If the Governor determines that the conveyance is not in the public interest, the conveyance would be prohibited.

The bill does recognize, however, that under the 1956 agreement between the State and the Board of Trustees of the university which established Rutgers as the State University, the State may not be legally empowered to prevent the conveyance of lands held in trust by the board. Therefore, the bill provides a special procedure to be employed when, after consultation with the Attorney General, the Governor determines that prohibition of the conveyance of a particular land holding by the State would expressly violate the 1956 agreement between the State and the trustees. Under that procedure, the State Auditor would annually determine and certify the income to Rutgers resulting from the disapproved conveyances. The State Treasurer would then transfer from the funds appropriated for Rutgers to the State's "Green Acres" fund an amount equal to the amount certified by the State Auditor. This transfer would guarantee that open space lost by the development of the Rutgers land could be offset by the purchase of open space for use elsewhere.

As originally drafted, the State House Commission would have been empowered to review land conveyances by Rutgers.

The committee also amended the bill to clarify that development by Rutgers which is not directly related to education is subject to local land use planning and zoning requirements.

Additionally, the committee amendments delete certain language from the findings section of the bill which the committee determined to be unnecessary and inappropriate.

SENATE NATURAL RESOURCES AND  
AGRICULTURE COMMITTEE

STATEMENT TO

SENATE, No. 2100

STATE OF NEW JERSEY

DATED: MARCH 21, 1988

The Senate Natural Resources and Agriculture Committee favorably reported Senate Bill No. 2100.

This bill establishes a mechanism to ensure that the lands of Rutgers, the State University may not be conveyed for development without a thorough review to protect the public interest. Under the bill, whenever Rutgers intends to sell or lease any of the land owned by the university or owned by the State and operated by the university, Rutgers must notify the State House Commission at least six months before the intended conveyance. The commission would hold a public hearing within 60 days of notification, and by a majority vote approve or disapprove the land deal within 60 days of the hearing. A vote of disapproval would prohibit the conveyance in most instances.

The bill does recognize that the 1956 agreement between the State and the Boards of Trustees of the university may create special circumstances for certain university property. The bill provides a special procedure to be employed if, after a vote of disapproval, the Attorney General determines that for a particular land holding a prohibition of the conveyance by the State would expressly violate the 1956 agreement between the State and the trustees. Under that procedure, the State Auditor would annually determine and certify the income to Rutgers resulting from disapproved conveyances. Annually, the State Treasurer would transfer from the funds appropriated for Rutgers to the State's "Green Acres" fund an amount equal to the amount certified by the State Auditor. This transfer would guarantee that open space lost by the development of the Rutgers land could be offset by the purchase of open space for public use elsewhere.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

August 4, 1988

SENATE BILL NO. 2100 (First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 2100 (First Reprint) with my objections, for reconsideration.

Senate Bill No. 2100 (First Reprint), sponsored by Senator Haines, establishes a mechanism for gubernatorial oversight and review of land conveyances by Rutgers, the State University. It further codifies the well-known Rutgers v. Piluso decision to clarify that development by Rutgers which is not directly related to education is subject to local land use planning and zoning requirements. It also authorizes that the oversight mechanism be applied retroactively in order to capture within its reach a current local development dispute over the Cedar Lane Tract II lands located in Highland Park and Piscataway which borders on the Rutgers Ecological Preserve. Rutgers has proposed to lease this tract of land to a developer for multi-family housing.

I fully understand and appreciate the pro-environmental elements of this local development issue. I equally understand the need as well as the difficulty of finding affordable housing in the northern corridor of this State. I am compelled, however, to return this overbroad bill to the Legislature because I believe there is available a better tailored response to this issue.

I support the statutory and constitutional policy of New Jersey which has vested basic local zoning policy in local legislative officials. Local government can best determine for itself the appropriate set of controls, i.e., uses, heights, setbacks, densities, etc., it may want to impose upon land development of a community and its environment to promote its social and economic well-being. I do not believe that this salutary public policy of local determination is improved were I or succeeding Governors to substitute our personal ideas on local land use for the views of those in whom the local electorate have already vested that responsibility.

In reaching my determination that gubernatorial involvement in these matters is not appropriate, I am guided by the question of unconstitutionality both as to the spirit and letter of the oversight review, the transfer of funds and the bill's retroactive application. Indeed, the Attorney General advises

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

that Senate Bill No. 2100 is susceptible to competing interpretations as to the category of Rutgers' property that falls within its intended ambit. The procedure utilized by this bill for automatic transfer of funds, by officers of the Executive Branch of government, is also of constitutional concern because it attempts to do indirectly what all acknowledge the Legislature could not do directly, that is, prohibit the conveyance of trustee property under the 1956 Compact between Rutgers and the State of New Jersey. Under the bill, the appropriation transfer from Rutgers to the Green Acres Fund would be concluded without independent legislative consideration of the needs of either Rutgers or Green Acres. Such self-executing shifts of appropriations have been read by the New Jersey Supreme Court as impermissible under New Jersey law. The Attorney General further advises that the retroactive effect of this legislation is problematic on both legal and practical grounds.

Even though I personally believe that the tract of land at issue ought to remain open space, I must take into account the impact that statutorily mandated gubernatorial review of land conveyances by Rutgers would have on the general policy of autonomy and self-governance for institutions of higher education in this State. I am convinced that the general issue of transfer and conveyance of real estate by Rutgers or any institution of higher education is adequately controlled through existing local land use planning entities. For this reason, I do support the provision established by this bill which requires Rutgers to abide by local land use planning and zoning requirements in the development of its lands in instances where such development is not directly related to educational goals. To ensure, however, that the citizens of this State are afforded an opportunity to be heard, I also support the provisions requiring notice and a public hearing. In doing so, I am satisfied that local zoning guidelines and limitations will seek to balance out, in a meaningful way, the competing interests involved in the factual genesis which sparked this bill and any future land development issues.

Accordingly, I return Senate Bill No. 2100 (First Reprint) and recommend that it be amended as follows:

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

3

Page 2, Section 2, Line 7: After "successor." delete "Notice shall be provided in a manner and form to"

Page 2, Section 2, Line 8: Delete in entirety

Page 2, Section 3, Lines 9-10: Delete "a. At least" insert "Within"; after "days" delete "prior to" and insert "after"

Page 2, Section 3, Lines 18-39: Delete in entirety

Page 3, Section 3, Lines 1-3: Delete in entirety

Page 3, Section 4, Lines 4-10: Delete in entirety

Page 3, Section 5, Line 11: Delete "5." insert "4."

Page 3, Section 6, Lines 18-19: Delete in entirety

Page 3, Section 6, After Line 19: Insert new section as follows:  
"5. This act shall take effect immediately."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel