

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:4-5.1 et al

(Counties--open space preservation--acquire land water and areas)

LAWS OF: 1989

CHAPTER: 30

Bill No: A2297

Sponsor(s): Bennett

Date Introduced: January 25, 1988

Committee: Assembly: Conservation, Natural Resources and Energy

Senate: Energy and Environment

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 20, 1988

Senate: October 24, 1988

Date of Approval: February 17, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping attached:

"Kean signs bill to purchase...open space," 2-18-89.

[THIRD REPRINT]
ASSEMBLY, No. 2297

STATE OF NEW JERSEY

INTRODUCED JANUARY 25, 1988

By Assemblyman BENNETT and Assemblywoman Farragher

1 AN ACT concerning open space preservation by certain
2 counties^{2,2} and supplementing ¹[R.S.40:12-8] ²[chapter 12 of]²
3 Title 40 of the Revised Statutes¹.

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

7 1. The governing body of any county²[operating under the
8 provisions of R.S.40:12-1 through 40:12-8,]² in which the voters
9 of the county have approved, in a general or special election, a
10 proposition authorizing the acquisition of lands for conservation
11 as open space, ²[may] ³[shall² appropriate annually] may annually
12 raise by taxation, including for purpose of debt service payments
13 on indebtedness issued for the acquisition of open space,³ a sum
14 not to exceed the amount ²or rate² set forth in the proposition
15 approved by the voters, for the acquisition of land or water areas,
16 and any ¹existing¹ improvements thereon, within the county for
17 conservation as open space. Amounts ³[appropriated] raised by
18 taxation³ hereunder shall be deposited in a county open space
19 preservation trust fund and shall be used exclusively for the
20 acquisition of open space areas. Selection of open space areas
21 for acquisition shall be in accordance with ²[the county's] a²
22 park, recreational and open space plan ²[and R.S.40:12-3]
23 prepared and adopted by the county².

24 ²Whenever the county shall determine that it is necessary that
25 any public utility facilities such as tracks, pipes, mains, conduits,
26 cables, wires, towers, poles and other equipment and appliances
27 of any public utility, as defined in R.S.48:2-13, which are now, or
28 hereafter may be, located in, on, along, over or under any open
29 space area acquired by the county, should be removed from such

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:

¹ Assembly ANR committee amendments adopted May 16, 1988.

² Senate SEN committee amendments adopted September 19, 1988.

³ Assembly amendments adopted in accordance with Governor's
recommendations January 10, 1989.

1 area, the public utility owning or operating such facilities shall
2 relocate or remove the same in accordance with the open space
3 plan prepared and adopted by the county; except that the cost
4 and expenses of such relocation or removal, including the cost of
5 installing such facilities in a new location or new locations, and
6 the cost of any lands, or any rights or interests in lands, and any
7 other rights acquired to accomplish such relocation or removal,
8 less the cost of any lands or any rights of the public utility paid
9 to the public utility in connection with the relocation or removal
10 of such property, shall be ascertained and paid by the county as a
11 part of the cost of the acquisition. In case of any such relocation
12 or removal of facilities, as aforesaid, the public utility owning or
13 operating the same, its successors or assigns, may maintain and
14 operate such facilities, with the necessary appurtenances, in the
15 new location, for as long a period, and upon the same terms and
16 conditions, as it had the right to maintain and operate such
17 facilities in their former location.²

As used in this act:

19 "Acquisition" means the securing of a fee simple absolute or a
20 lesser interest by gift, purchase, devise or condemnation.

21 "Open space" means land or water areas to be retained in a
22 largely natural or undeveloped state, for purposes of, among
23 other things, providing parkland or green spaces, protecting
24 ecologically sensitive areas, preserving flora and wildlife, or
25 protecting or preserving areas of scenic, historic and cultural
26 value, while at the same time affording, whenever practicable,
27 public outdoor recreational opportunities for the county's
28 residents. "Open space" may include a recreational area such as
29 a golf course if the acquisition subserves the objective of this act
30 of protecting a largely undeveloped area from future
31 development.

2. Land or water areas, and any improvements thereon,
33 acquired pursuant to this act shall be held in a county open space
34 preservation trust and shall be used exclusively for purposes
35 authorized under this act. Upon a finding that the purposes of this
36 act might otherwise be better served or that an open space area
37 is required for another public use, which finding shall be set forth
38 in a resolution adopted by the governing body ¹of the county¹,
39 the governing body may convey, through sale, exchange or other
disposition, title to, or a lesser interest in, an open space area

1 acquired under this act and described in the resolution, provided
the governing body shall replace any open space conveyed under
3 this section by land or water areas at least equal in size to the
open space area conveyed, and any monies derived from the
5 conveyance shall be deposited in the county open space
preservation trust fund for use in the acquisition of open space.
7 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
9 event of conveyance by exchange, the land or water area to be
transferred to the county open space preservation trust shall be
11 at least equal in value to that of the property conveyed from the
trust.

13 3. Amounts ³[appropriated] raised by taxation³ for the
acquisition of open space pursuant to this act shall be apportioned
15 by the county board of taxation among the municipalities within
the county in accordance with R.S.54:4-49. The amounts so
17 apportioned shall be assessed, levied and collected in the same
manner and at the same time as other county taxes. The tax
19 collected hereunder shall be referred to as the ²["county open
space preservation trust fund tax"] "County Open Space
21 Preservation Trust Fund Tax"².

23 4. The governing body of the county ²[may] shall² annually
appropriate such amounts as it may deem necessary for the care,
custody, policing and maintenance of, including improvements to,
25 open space ²[in the same manner as provided in R.S.¹[40:12-3
through 40:12-8, for playgrounds and recreational places]
27 40:12-7¹]², which amounts shall be in addition to any monies
³[appropriated to] deposited in³ the ¹county¹ open space
29 preservation trust fund. The ²[board of recreation
commissioners] governing body of the county² shall have full
31 control of the open space and may adopt ²a resolution providing
for² suitable rules, regulations and by-laws for their use, provide
33 for the enforcement thereof, ²[in accordance with R.S.40:12-6,]²
and, when appropriate, charge and collect reasonable fees for use
35 of the open space or for activities conducted thereon ²[as
provided in R.S.40:12-5]².

37 5. This act shall take effect immediately and shall
retrospectively apply to any county whose voters have approved a
39 proposition to acquire open space within two years of the
effective date of this act.

A2297 [3R]

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NATURAL RESOURCES

Parks and Forests

3

**Authorizes counties to acquire land or water areas for open space
5 preservation.**

1 rules, regulations and by-laws for their use, provide for the
 2 enforcement thereof, in accordance with R.S. 40:12-6, and, when
 3 appropriate, charge and collect reasonable fees for use of the
 4 open space or for activities conducted thereon as provided in R.S.
 5 40:12-5.

6 5. This act shall take effect immediately and shall
 7 retrospectively apply to any county whose voters have approved a
 8 proposition to acquire open space within two years of the
 9 effective date of this act.

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STATEMENT

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14 This bill authorizes certain counties to acquire land or water
 15 areas for retention in an open space preservation trust if the
 16 voters of the county have approved an open space acquisition
 17 program. The bill limits the amount that can annually be
 18 appropriated by the county for open space acquisition to an
 19 amount not to exceed that approved by the voters. The annual
 20 costs of acquiring the open space shall be apportioned among the
 21 municipalities within the county on the basis of each
 22 municipality's apportionment valuation. The tax, to be known as
 23 the "open space preservation trust fund tax," shall be assessed,
 24 levied and collected in the same manner and at the same time as
 25 other county taxes. The county may appropriate additional
 26 monies for open space operations and maintenance in the same
 27 manner as is presently provided for playground and recreational
 28 facilities.

29 Open space areas would be an integral part of a county parks
 30 and recreation system. Areas would be selected for open space
 31 acquisition with the twin objective of retaining land or water
 32 areas in a largely natural or undeveloped state, or providing
 33 parklands, while also affording, whenever practicable,
 34 recreational opportunities to county residents.

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NATURAL RESOURCES

Parks and Forests

39

40 Authorizes certain counties to acquire land or water areas for
 41 open space preservation.

ASSEMBLY COMMITTEE ON CONSERVATION,
NATURAL RESOURCES AND ENERGY

STATEMENT TO

ASSEMBLY, No. 2297

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 16, 1988

A-2297 is reported favorably with amendments by the committee.

This bill authorizes counties, that have established a board of recreation commissioners, to acquire land or water areas for retention in an open space preservation trust if the voters of the county approve, or have approved within two years prior to the bill's enactment, an open space acquisition referendum. The bill limits the amount that can annually be appropriated by the county for open space acquisition to an amount not to exceed that approved by the voters. The bill does not specifically limit the amount of years this appropriation may be made. The annual costs of acquiring the open space shall be apportioned among the municipalities within the county on the basis of each municipality's apportionment valuation. The tax, to be known as the "open space preservation trust fund tax," shall be assessed, levied and collected in the same manner and at the same time as other county taxes. The county may appropriate additional monies for open space operations and maintenance in the same manner as is presently provided for playground and recreational facilities.

The open space that may be acquired is to be retained in a largely natural or undeveloped state. The land or water to be acquired may be used to preserve the environment or scenic, historical, or cultural areas. Whenever possible the open space shall provide recreational opportunities. Open space may also include recreational areas such as golf courses if needed to protect the land from development. The bill also provides that open space acquired under the act may be sold or exchanged for other open space if no longer needed for the open space conservation.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2297

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1988

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 2297 (1R) with Senate committee amendments.

As introduced, Assembly Bill No. 2297 (1R) authorizes certain counties to acquire land or water areas for retention in an open space preservation trust if the voters of the county have approved an open space acquisition program. The Committee amended the bill to extend this open space acquisition program to include any county. The bill limits the amount or rate that can annually be appropriated by the county for open space acquisition to an amount not to exceed that approved by the voters. The annual costs of acquiring the open space shall be apportioned among the municipalities within the county on the basis of each municipality's apportionment valuation. The tax, to be known as the "open space preservation trust fund tax," shall be assessed, levied and collected in the same manner and at the same time as other county taxes. The county may appropriate additional monies for open space operations and maintenance in the same manner as is presently provided for playground and recreational facilities.

Open space areas would be an integral part of a county parks and recreation system. Areas would be selected for open space acquisition with the twin objective of retaining land or water areas in a largely natural or undeveloped state, or providing parklands, while also affording, whenever practicable, recreational opportunities to county residents.

In addition to several technical changes, the Committee amended the bill to hold harmless any public utility whose facilities may have to be relocated as a result of an open space acquisition.

As amended, Assembly Bill No. 2297 (1R) Sca is identical to Senate Bill No. 2766 Sca.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 10, 1989

ASSEMBLY BILL No. 2297 (SECOND REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 2297 (Second Reprint) with my objections for reconsideration.

The purpose of this bill is to allow voters in all counties to approve the raising of funds for open space acquisition through a special tax. This tax, known as the "Open Space Preservation Trust Fund Tax" (Open Space Tax), is to be apportioned among the municipalities within the county on the basis of each municipality's apportionment valuation. Under the bill in its present form, the amount of money which shall be appropriated for the acquisition of open space shall not exceed the amount or rate set forth in the proposition approved by the voters. Monmouth County's referendum to raise \$4 million a year for the acquisition of open space (which was approved by the voters last November) was the impetus for this bill; the bill was later expanded to apply to all counties.

We support the purpose of this bill and its establishment of a mechanism which allows the counties to acquire open space for preservation. However, we have been contacted by the Assembly Sponsor who has pointed out a potential problem with the bill which must be addressed. As drafted, the bill may be interpreted to deny a county's ability to provide funds for open space acquisition by any means other than the Open Space Tax. Presently, the bill states that, "The governing body of any county in which the voters of the county have approved, in a general or special election, a proposition authorizing the acquisition of lands for conservation as open space, shall appropriate annually a sum not to exceed the amount or rate set forth in the proposition approved by the voters, for the acquisition of land or water areas, and any existing improvements thereon, within the county for conservation as open space."

The Sponsor fears that this language may be read to limit all county appropriations for open space acquisition to the dollar figure contained in the proposition authorized by the voters. For example, although Monmouth County

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recently approved a \$25 million bond for acquisition and preservation of open space, it might nevertheless be limited to annually appropriating only \$4 million of that money, as this was the dollar figure set forth in the proposition authorized by the voters. This restrictive reading would not allow Monmouth County to go forward with its plan to acquire more open space immediately at lower prices and would force it to postpone acquisition, for which it presently has funds, for the uncertain future. Again, this was never the intent of the bill. The purpose of the bill was to provide counties with a mechanism for raising monies to acquire open space through a special tax, the amount of which had to be approved by the voters. The bill was never intended to limit the amount of other monies a county could raise and appropriate, if it so chooses, to acquire additional open space.

To correct this inadvertent limitation on the counties' ability to acquire open space, the bill should be amended to make it clear that the financial limitations set forth with regard to the acquisition of open space apply only to the monies raised through the Open Space Tax provided in the bill. These changes are intended to make it clear that a county is free to raise money for open space acquisition by other means, including the issuance of bonds, and that the monies raised by these other means are in no way limited by the dollar figure set forth in the proposition approved by the voters.

Therefore, I herewith return Assembly Bill No. 2297 (Second Reprint) and recommend that it be amended as follows:

Page 1, Section 1, Line 11: Delete "shall appropriate annually",
insert "may annually raise by taxation,
including for purpose of debt service
payments on indebtedness issued for the
acquisition of open space,"

Page 1, Section 1, Line 15: Delete "appropriated",
insert "raised by taxation"

Page 3, Section 3, Line 11: Delete "appropriated",
insert "raised by taxation"

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Page 3, Section 4, Line 26: Delete "appropriated to,"

Insert "deposited in"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel