

40:55D- 113 to 40:55D-129

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 40:55D-113 to 40:55D-129 "Burlington County Transfer of  
Development Rights Demonstration  
Act"

**LAWS OF:** 1989 **CHAPTER:** 86

**BILL NO:** A3637

**SPONSOR(S):** Shinn

**Date Introduced:** August 12, 1988

**Committee:** **Assembly:** Natural Resources  
**Senate:** Energy and Environment

**Amended during passage:** No

**Date of Passage:** **Assembly:** October 27, 1988  
**Senate:** April 24, 1989

**Date of Approval:** June 5, 1989

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee statement:** **Assembly** Yes  
**Senate** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on Signing:** Yes

**Following were printed:**

**Reports:** No

**Hearings:** No

"Kean stresses farm preservation as he signs law, delivers checks," Star Ledger

P.L.1989, CHAPTER 86, *approved June 5, 1989*  
1988 Assembly No. 3637

1 **AN ACT** concerning the establishment of a demonstration  
program for the transfer of development potential, amending  
3 P.L.1983, c.32, and supplementing Title 4 of the Revised  
Statutes.

5

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

1. (New section) Sections 1 through 14 and 17 through 19 of  
9 this act shall be known and may be cited as the "Burlington  
County Transfer of Development Rights Demonstration Act."

11 2. (New section) The Legislature finds and declares that as  
the most densely populated state in the nation, the State of New  
13 Jersey is faced with the challenge of accommodating vital growth  
while maintaining the environmental integrity and preserving the  
15 natural resources and cultural heritage of the Garden State; that  
the responsibility for meeting this challenge falls most heavily  
17 upon local government to appropriately shape the land use  
patterns so that growth and preservation become compatible  
19 goals; that until now municipalities have lacked effective and  
equitable means by which potential development may be  
21 transferred from areas where preservation is most appropriate to  
areas where growth can be better accommodated and maximized;  
23 and that the tools necessary to meet the challenge of balanced  
growth in an equitable manner in New Jersey must be made  
25 available to local government as the architects of New Jersey's  
future.

27 The legislature further finds and declares that prior to the  
implementation of development potential transfer programs on a  
29 Statewide basis, it is necessary to demonstrate its feasibility in a  
pilot program; that such a pilot program should take place in an  
31 area where there is experience with development easement  
purchase and transfer; that Burlington County served as the  
33 program area for the "Agricultural Preserve Demonstration

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.

1 Program Act," P.L.1976, c.50 (C.4:1B-1 et seq.), and has  
2 participated to a greater extent than any other county in both  
3 the pinelands development credit program instituted under the  
4 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et  
5 seq.) and the development easement purchase program instituted  
6 under the "Agriculture Retention and Development Act,"  
7 P.L.1983, c.32 (C.4:1C-11 et al.); that because of this  
8 participation and the familiarity of local government units and  
9 the residents of the county with this land use planning  
10 technique, it is especially suited and provides the most  
11 conducive laboratory to demonstrate the feasibility of such a  
12 program.

13 3. (New section) As used in this act:

14 "Agricultural land" means land identified as prime, unique, or  
15 of State importance according to criteria adopted by the State  
16 Soil Conservation Committee with emphasis on lands included in  
17 an agricultural development area duly identified by a county  
18 agriculture development board and certified by the State  
19 Agriculture Development Committee according to the provisions  
20 of section 11 of P.L.1983, c.32 (C.4:1C-18);

21 "County agriculture development board" or "CADB" means  
22 the county agriculture development board established by  
23 Burlington county pursuant to the provisions of section 7 of  
24 P.L.1983, c.32 (C.4:1C-14);

25 "Development potential" means the maximum number of  
26 dwelling units or square feet of nonresidential floor area that  
27 could be constructed on a specified lot or in a specified zone  
28 under the master plan and land use regulations in effect on the  
29 date of the adoption of the development transfer ordinance, and  
30 in accordance with recognized environmental constraints;

31 "Development transfer" means the conveyance of  
32 development potential, or the permission for development, from  
33 one or more lots to one or more other lots by deed, easement, or  
34 other means as authorized by ordinance;

35 "Municipality" means any municipality in Burlington County;

36 "Infrastructure plan" means the water, sewer, and highway  
37 development plan for the receiving zone established by a  
38 development transfer ordinance;

39 "Development transfer bank" means a bank created pursuant  
40 to section 13 of this act;

1       **"Instruments" means the easement, credit, or other deed**  
restriction used to record a development transfer;

3       **"Receiving zone" means an area designated in the master plan**  
and zoning ordinance, adopted pursuant to the provisions of  
5 P.L.1975, c.291 (C.40:55D-1 et seq.), within which development  
is to be increased, and which is otherwise consistent with the  
7 provision of section 6 of this act;

**"Sending zone" means an area designated in the master plan**  
9 and zoning ordinance, adopted pursuant to the provision of  
P.L.1975, c.291 (C.40:55D-1 et seq.), within which development  
11 is to be prohibited or restricted and which is otherwise  
consistent with the provisions of section 6 of this act; and

13       4. (New section) a. The governing body of any municipality  
in Burlington County may, by ordinance approved by the county  
15 planning board, provide for the transfer of development within  
its jurisdiction. The governing bodies of two or more  
17 municipalities may, by substantially similar ordinances, provide  
for a joint program for the transfer of development, including  
19 transfers from sending zones in one municipality to receiving  
zones in the other.

21       b. The Office of State Planning, established pursuant to  
section 6 of P.L.1985, c.398 (C.52:18A-201), shall provide such  
23 technical assistance as may be requested by municipalities or  
the county planning board, and as may be reasonably within the  
25 capacity of the Office to provide, for the purpose of providing  
for development transfers pursuant to the provisions of this act.  
27 The office shall also carry out its responsibilities as provided in  
sections 9 and 11 of this act.

29       5. (New section) Prior to the adoption of any development  
transfer ordinance, a municipality interested in adopting the  
31 ordinance shall:

      a. Prepare a report that includes the following:

33       (1) an estimate of the anticipated population and economic  
growth in the municipality for the succeeding 10 years;

35       (2) the identification and description of all prospective  
sending and receiving zones;

37       (3) an estimate of the development potential of the  
prospective sending and receiving zones;

39       (4) an estimate of the typical land values of the proposed  
sending zone;

1 (5) an estimate of existing and proposed infrastructure of the  
proposed receiving zone; and

3 (6) a presentation of the procedure and method for issuing the  
instruments necessary to convey the development potential from  
5 the sending zone to the receiving zone.

b. Cause to be prepared an infrastructure plan for the  
7 receiving zone, which includes the location and cost of all  
infrastructure and a method of cost sharing if any portion of the  
9 cost is to be assessed against developers. The plan shall be  
enacted by ordinance prior to or concurrent with enactment of  
11 any development transfer ordinance.

c. Incorporate in its master plan and land use regulations  
13 explicit planning objectives and design standards for the  
receiving zone so that applications for development that  
15 maximize the use of development transfer and that are  
consistent with the planning objectives and design standards can  
17 be expedited. The municipality may, through application fees  
for development in the receiving zone, be reimbursed on a pro  
19 rata basis for the cost of amending its master plan and land use  
regulations.

21 The development transfer ordinance shall not take effect until  
the report and plans required under this section have been  
23 prepared and the conclusions therefrom have been included in  
the master plan adopted pursuant to section 19 of P.L.1975,  
25 c.291 (C.40:55D-28).

6. (New section) The municipality shall, in view of the  
27 information gathered from the report and plans prepared  
pursuant to section 5 of this act, prepare a development transfer  
29 ordinance that designates sending and receiving zones.

a. In creating and establishing sending and receiving zones,  
31 the governing body of the municipality shall designate tracts of  
land of such size and number as may be necessary to carry out  
33 the purposes of this act.

b. All land in a sending zone shall have one or more of the  
35 following characteristics:

(1) substantially undeveloped or unimproved farmland,  
37 woodland, floodplain, wetlands, endangered species habitat,  
aquifer recharge area, recreation or park land, waterfront, or  
39 steeply sloped land;

(2) land substantially improved or developed in a manner so as

1 to present a unique and distinctive aesthetic, architectural, or  
historical point of interest in the municipality.

3 (3) other improved or unimproved areas that should remain at  
low densities for reason of inadequate transportation, sewerage  
5 or other infrastructure, or for such other reasons as may be  
necessary to implement local or regional plans.

7 c. Lands permanently restricted through development or  
conservation easements existing prior to the adoption of a  
development transfer ordinance may be included in a sending  
9 zone upon a finding by the municipal governing body that this  
inclusion is in the public interest.

11 d. The receiving zone shall be appropriate and suitable for  
development and shall be at least sufficient to accommodate at  
13 all times all of the development potential of the sending zone.

15 e. The development potential of the receiving zone shall be  
determined by the governing body of the municipality utilizing  
17 the report and plans prepared pursuant to section 5 of this act;  
be realistically achievable in a functioning market as of the date  
19 of the adoption of the development transfer ordinance; provide  
for a minimum of twice the development permitted in the  
21 receiving zone as of the date of the adoption of the development  
transfer ordinance; and be consistent with the criteria  
23 established pursuant to subsection b. of section 8 of this act. No  
density increases may be achieved in a receiving zone without  
25 the use of appropriate instruments of transfer.

27 f. The municipal governing body shall, pursuant to the  
ordinance, direct the municipal planning board to carry out the  
development transfer program.

29 7. (New section) a. The development transfer ordinance  
shall provide for the issuance of such instruments as may be  
31 necessary and the adoption of procedures for recording the  
permitted use of the land at the time of the recording, the  
33 separation of the development potential from the land, and the  
recording of the allowable residual use of the land upon  
35 separation of the development potential.

37 b. The development transfer ordinance shall specifically  
provide that upon the transfer of the development potential  
from a sending zone, the owner of the property from which the  
39 development potential has been transferred shall cause a  
statement containing the conditions of the transfer and the

1 terms of the restrictions of the use and development of the land  
2 to be attached to and recorded with the deed of the land in the  
3 same manner as the deed was originally recorded. These  
4 restrictions and conditions shall state that any development  
5 inconsistent therewith is expressly prohibited, shall run with the  
6 land, and shall be binding upon the landowner and every  
7 successor in interest thereto.

8 c. The development transfer ordinance shall provide that, on  
9 granting a use variance under the provisions of section 57 of  
10 P.L.1975, c.291 (C.40:55D-70) that increases the development  
11 potential of a parcel of property not in the designated receiving  
12 zone for which the variance has been granted by more than 5%,  
13 that parcel of property shall constitute a receiving zone and the  
14 provisions of the ordinance for receiving zone shall apply with  
15 respect to the amount of development potential required to  
16 implement that variance.

17 8. (New section) a. Prior to adoption of the development  
18 transfer ordinance, the municipality shall submit a copy of the  
19 proposed ordinance, copies of all reports and plans prepared  
20 pursuant to section 5 of this act, and proposed municipal master  
21 plan changes necessary for the enactment of the development  
22 transfer ordinance to the county planning board. If the  
23 ordinance and master plan changes involve agricultural land,  
24 then the Burlington County Agriculture Development Board shall  
25 also be provided information identical to that provided to the  
26 county planning board.

27 b. The county planning board, upon receiving the development  
28 transfer ordinance and accompanying documentation, shall  
29 conduct a review of the ordinance with regard to the following  
30 criteria:

31 (1) consistency with the adopted master plan of the county;

32 (2) support of regional objectives for agricultural land  
33 preservation, natural resource management and protection,  
34 historic or architectural conservation, or the preservation of  
35 other public values as enumerated in subsection b. of section 6  
36 of this act;

37 (3) consistency with reasonable population and economic  
38 forecasts for the county;

39 (4) adequacy of present or proposed infrastructure for  
40 concentrated growth; and

1 (5) sufficiency of the receiving zone to accommodate the  
development potential that may be transferred from sending  
3 zones and a reasonable assurance of marketability of any  
instruments of transfer that may be created.

5 c. Any municipality located in whole or in part in the  
pinelands area, as defined in P.L.1979, c.111 (C.13:18A-1 et  
7 seq.), shall also submit the proposed development transfer  
ordinance, reports and plans, and master plan changes to the  
9 Pinelands Commission for review. The Pinelands Commission  
shall determine whether the ordinance is compatible with the  
11 pinelands development credit program implemented pursuant to  
P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise  
13 consistent with the comprehensive management plan adopted by  
the Pinelands Commission pursuant to P.L.1979, c.111  
15 (C.13:18A-1 et seq.). If the commission determines that the  
development transfer ordinance is not compatible or consistent,  
17 the commission shall make such recommendations as may be  
necessary to conform the ordinance with the comprehensive  
19 management plan. The municipality shall not adopt the  
ordinance unless the changes recommended by the Pinelands  
21 Commission have been included in the ordinance.

23 9. (New section) a. Within 60 days of receiving the  
development transfer ordinance and accompanying  
documentation, the county planning board shall submit to the  
25 municipality formal comments detailing its review and shall  
either recommend or not recommend enactment of the  
27 development transfer ordinance. If enactment of the ordinance  
is recommended, the municipality may proceed with adoption of  
29 the ordinance. Failure to recommend or not recommend  
enactment of the ordinance within the 60-day period shall  
31 constitute recommendation of the ordinance.

33 b. The CADB shall review the development transfer  
ordinances and accompanying documentation within 30 days of  
receipt thereof, and shall submit such written recommendations  
35 as it deems appropriate, to the county planning board.

37 c. If the county planning board does not recommend  
enactment, the reasons therefor shall be clearly stated in their  
formal comments. If the objections of the county planning  
39 board cannot be resolved to the satisfaction of both the  
municipality and the county planning board within an additional



1 30 days, the municipality shall petition the Office of State  
2 Planning to render a final determination. In the event that a  
3 development transfer ordinance involves agricultural land, the  
4 municipality shall petition the Office of State Planning for a  
5 final determination.

6 d. The Office of State Planning shall review the record of  
7 comment of the county planning board, and the development  
8 transfer ordinance and supporting documentation, and within 60  
9 days approve, approve with conditions, or disapprove the  
10 transfer ordinance stating in writing the reasons therefor.  
11 Failure of the Office of State Planning to approve, approve with  
12 conditions, or disapprove the development transfer ordinance  
13 within the 60-day period constitutes approval of the ordinance.  
14 The basis for review by the Office of State Planning shall be:

15 (1) compliance of the development transfer ordinance with  
16 the provisions of this act,

17 (2) accuracy of the information developed in the report and  
18 plans prepared pursuant to subsections a., b., and c. of section 5  
19 of this act; and

20 (3) an assessment of the potential of successful  
21 implementation of the development transfer ordinance.

22 10. (New section) a. All development transfers shall be  
23 recorded in the manner of a deed in the book of deeds in the  
24 office of the Burlington county clerk. This recording shall  
25 specify the lot and block number of the parcel in the sending  
26 zone from which the development potential was transferred and  
27 the lot and block number of the parcel in the receiving zone to  
28 which the development potential was transferred.

29 b. The county clerk shall transmit to the assessor of the  
30 municipality in which a development transfer has occurred a  
31 record of the transfer and all pertinent information required to  
32 value, assess, and tax the properties subject to the transfer in a  
33 manner, consistent with subsection c. of this section.

34 c. Property from which and to which development potential  
35 has been transferred shall be assessed at its fair market value  
36 reflecting this development transfer. Development potential  
37 that has been removed from a sending zone but has not yet been  
38 employed in a receiving zone shall not be assessed for real  
39 property taxation. Nothing in this act shall be construed to  
40 affect, or in any other way alter, the valuation assessment, or

1 taxation of land that is valued, assessed, and taxed pursuant to  
the "Farmland Assessment Act of 1964," P.L.1964, c.48  
3 (C.54:4-23.1 et seq.).

4 d. Property in a sending or receiving zone that has been  
5 subject to a development transfer shall be newly valued,  
assessed, and taxed as of October 1 next following the  
7 development transfer.

8 e. Development potential that has been conveyed from a  
9 property pursuant to this act is not subject to the fee imposed  
pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

11 11. (New section) a. The development transfer ordinance  
shall be reviewed by the planning board and governing body of  
13 the municipality at the end of three years subsequent to  
enactment. This review shall include an analysis of development  
15 potential transactions in both the private and public market, an  
update of current conditions in comparison to the original report  
17 prepared pursuant to section 5 of this act, and an assessment of  
the performance goals of the development transfer program  
19 including an evaluation of the units constructed with and  
without the utilization of the development transfer ordinance.  
21 A report of findings from this review shall be submitted to the  
county planning board and, where the sending zone includes  
23 agricultural land, the CADB for review and recommendations.  
Based on this review the municipality shall act to maintain and  
25 enhance the value of development transfer potential not yet  
utilized and, if necessary, amend the infrastructure plan and  
27 comprehensive development plan and design standards prepared  
pursuant to section 5 of this act.

29 b. The development transfer ordinance shall be reviewed by  
the planning board and governing body of the municipality at the  
31 end of six years subsequent to enactment. This review shall  
provide for the examination of the development transfer  
33 ordinance to determine whether the program for development  
transfer and the permitted uses in the sending zone continue to  
35 remain economically viable, and shall require an update of the  
report and plans prepared pursuant to section 5 of this act. If at  
37 least 30% of the development potential available on the market  
at market value has not been transferred at the end of this  
39 six-year period, the municipal governing body shall repeal the  
development transfer ordinance within 90 days of the end of the

1 six-year period unless one of the following is met:

3 (1) the municipality immediately takes action to acquire or  
5 provide for the private purchase of the difference between the  
7 development potential already transferred and 50% of the total  
9 development transfer potential created in the sending zone  
11 under the development transfer ordinance;

13 (2) a majority of the property owners in a sending zone who  
15 own land from which the development potential has not yet been  
17 transferred agree that the development transfer ordinance  
19 should remain in effect; or

21 (3) the municipality can demonstrate either future success or  
23 can demonstrate that low levels of development transfer  
25 activity is due not to ordinance failure but to low levels of  
27 development demand in general. This demonstration shall  
29 require the concurrence of the county planning board and the  
Office of State Planning, and shall be the subject of a municipal  
public hearing conducted prior to a final determination  
regarding the future viability of the development transfer  
program.

c. Thereafter the development transfer ordinance shall  
provide for review thereof by the planning board and the  
governing body of the municipality at least once every six years  
in conjunction with the review and update of the master plan of  
the municipality pursuant to the provisions of section 76 of  
P.L.1975, c.291 (C.40:55D-89). This review shall provide for the  
examination of the ordinance to determine whether the program  
and uses permitted in the sending zone continue to be  
economically viable and shall require an update of the report  
and plans prepared pursuant to section 5 of this act.

d. If 60% of the development potential has not been  
transferred at the end of a 12-year period, the municipal  
governing body shall repeal the development transfer ordinance  
within 90 days at the end of the 12-year period unless the  
municipality meets the standards established pursuant to  
subsection b. of this section.

12. (New section) a. If the development transfer ordinance  
is repealed, the municipality shall, by ordinance, amend its  
master plan to reflect the repeal and shall provide for continued  
use of development transfers that have been separated from a  
sending zone but which have not yet been redeemed by transfer

1 to a receiving zone by establishing density bonuses for  
development transfers to designated areas of the municipality  
3 for a period of not less than 10 years.

b. The repeal of a development transfer ordinance shall in no  
5 way rescind or otherwise affect the restrictions imposed and  
recorded pursuant to section 7 of this act on the use of the land  
7 from which the development potential has been transferred,  
unless all of the municipal, county, or State agencies to whom  
9 the deed restrictions run and whose funds were used to purchase  
the easement agree that it is in the public interest to release  
11 the restrictions.

13 13. (New section) a. The governing body of Burlington  
county or a municipality therein may provide for the purchase,  
sale, or exchange of the development potential that is available  
15 for transfer from a sending zone by the establishment of a  
development transfer bank. Any development transfer bank  
17 established therefor shall be governed by a board of directors  
comprising five members appointed by the governing body of the  
19 municipality or Burlington county, as the case may be. The  
members shall have expertise in either banking, law, land use  
21 planning, natural resource protection, historic site preservation  
or agriculture. The bank shall be funded at a level equal to at  
23 least 10% of the market value of the sending zone prior to the  
implementation of the development transfer ordinance for the  
25 purchase, sale, or exchange and shall be renewed to this funding  
level on an annual basis. For the purposes of this act and the  
27 "Local Bond Law," P.L.1960, c.169 (C.40A:2-1 et seq.), a  
purchase by the bank shall be considered an acquisition of lands  
29 for public purposes.

b. The development transfer bank is authorized to purchase  
31 property in a sending zone if:

(1) Adequate funds have been provided for these purposes;  
33 and,

(2) The person from whom the development potential is to be  
35 purchased demonstrates possession of marketable title to the  
property, is legally empowered to restrict the use of the  
37 property in conformance with this act, and certifies that the  
property is not otherwise encumbered or transferred.

39 c. The development transfer bank may, for the purposes of its  
own development potential transactions, establish a municipal

1 average of the value of the development potential of all  
2 property in a sending zone of a municipality within its  
3 jurisdiction, which value shall generally reflect market value  
4 prior to the effective date of the development transfer  
5 ordinance. The establishment of this municipal average shall not  
6 prohibit the purchase of development potential for any price by  
7 private sale or transfer but shall be used only when the  
8 development transfer bank itself is purchasing the development  
9 potential of property in the sending zone. Several average  
10 values in any sending zone may be established for greater  
11 accuracy of valuation.

12 d. The development transfer bank may sell, exchange, or  
13 otherwise convey the development potential of property that it  
14 has purchased or otherwise acquired pursuant to the provisions  
15 of this act, but only in a manner that does not substantially  
16 impair the private sale or transfer of development potential.

17 e. When the sending zone includes agricultural land a  
18 development transfer bank shall, when considering the purchase  
19 of development potential based upon values derived by municipal  
20 averaging, submit the municipal average arrived at pursuant to  
21 subsection c. of this section for review and comment to the  
22 CADB. The development transfer bank shall coordinate the  
23 development transfer program with the farmland preservation  
24 program established pursuant to P.L.1983, c.32 (C.4:1C-11 et  
25 al.) to the maximum extent practicable and feasible.

26 f. A development transfer bank may apply for funds for the  
27 purchase of development potential under the provisions of  
28 P.L.1978, c.118, P.L.1983, c.354, or any other act providing  
29 funds for the purpose of acquiring and developing land for  
30 recreation and conservation purposes consistent with the  
31 provisions and conditions of those acts.

32 g. A development transfer bank may apply for matching funds  
33 for the purchase of development potential under the provisions  
34 of P.L.1981, c.276 for the purpose of farmland preservation and  
35 agricultural development consistent with the provisions and  
36 conditions of that act and P.L.1983, c.32 (C.4:1C-11 et al.).

37 14. (New section) If the governing body of Burlington County  
38 provides for the acquisition of a development easement under  
39 the provisions of P.L.1983, c.32 (C.4:1C-11 et al.), it may sell  
40 the development potential associated with the development

1 easement subject to the terms and conditions of the  
 2 development transfer ordinance adopted pursuant to this act;  
 3 provided that if the development easement was purchased using  
 4 moneys provided under the "Farmland Preservation Bond Act of  
 5 1981," P.L.1981, c.276, a percentage of all revenues generated  
 6 through the resale of the development potential shall be  
 7 refunded to the State in an amount equal to the State's  
 8 percentage contribution to the original development easement  
 9 purchase. This repayment shall be made within 90 days after  
 the end of the calendar year in which the sale occurs.

11 15. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to  
 read as follows:

13 24. a. Any landowner applying to the board to sell a  
 development easement pursuant to section 17 of this act shall  
 15 offer to sell the development easement at a price which, in the  
 opinion of the landowner, represents a fair value of the  
 17 development potential of the land for nonagricultural purposes,  
 as determined in accordance with the provisions of this act.

19 b. Any offer shall be reviewed and evaluated by the board and  
 the committee in order to determine the suitability of the land  
 21 for development easement purchase. Decisions regarding  
 suitability shall be based on the following criteria:

23 (1) Priority consideration shall be given, in any one county, to  
 offers with higher numerical values obtained by applying the  
 25 following formula:

27 
$$\frac{\text{nonagricultural} - \text{agricultural} - \text{landowner's}}{\text{developmental value} \quad \text{value} \quad \text{asking price}}$$

29 
$$\frac{\text{nonagricultural} - \text{agricultural}}{\text{development value} \quad \text{value}}$$

31

33 (2) The degree to which the purchase would encourage the  
 survivability of the municipally approved program in productive  
 35 agriculture; and

37 (3) The degree of imminence of change of the land from  
 productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the  
 39 sale of development easements which is unsuitable according to  
 the above criteria and which has not been approved by the board

1 and the municipality.

3 c. Two independent appraisals paid for by the board shall be  
5 conducted for each parcel of land so offered and deemed  
7 suitable. The appraisals shall be conducted by independent,  
9 professional appraisers selected by the board and the committee  
11 from among members of recognized organizations of real estate  
13 appraisers. The appraisals shall determine the current overall  
15 value of the parcel for nonagricultural purposes, as well as the  
17 current market value of the parcel for agricultural purposes.  
19 The difference between the two values shall represent an  
21 appraisal of the value of the development easement. If  
23 Burlington county or a municipality therein has established a  
development transfer bank pursuant to the provisions of  
P.L.19...., c.....(C.....) (pending before the Legislature as  
this bill), the municipal average of the value of the development  
potential of property in a sending zone established by the bank  
may be the value used by the board in determining the value of  
the development easement. If a development easement is  
purchased using moneys appropriated from the fund, the State  
shall provide no more than 80%, except 100% under emergency  
conditions specified by the committee pursuant to rules or  
regulations, of the cost of the appraisals conducted pursuant to  
this section.

25 d. Upon receiving the results of the appraisals, or in  
27 Burlington county or a municipality therein where a municipal  
average has been established under P.L.19...., c..... (C.....)  
(pending before the Legislature as this bill), upon receiving an  
application from the landowners, the board and the committee  
29 shall compare the appraised value, or the municipal average, as  
the case may be, and the landowners offer and, pursuant to the  
31 suitability criteria established in subsection b. of this section:

33 (1) Approve the application to sell the development easement  
and rank the application in accordance with the criteria  
established in subsection b. of this section; or

35 (2) Disapprove the application, stating the reasons therefor.

37 e. Upon approval by the committee and the board, the  
secretary is authorized to provide the board, within the limits of  
39 funds appropriated therefor, an amount equal to no more than  
80%, except 100% under emergency conditions specified by the  
committee pursuant to rules or regulations, of the purchase

1 price of the development easement, as determined pursuant to  
the provisions of this section. The board shall provide its  
3 required share and accept the landowner's offer to sell the  
development easement. The acceptance shall cite the specific  
5 terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30  
7 days of receipt thereof. Any offer not accepted within that  
time shall be deemed rejected.

9 g. Any landowner whose application to sell a development  
easement has been rejected for any reason other than  
11 insufficient funds may not reapply to sell a development  
easement on the same land within two years of the original  
13 application.

h. No development easement shall be purchased at a price  
15 greater than the appraised value determined pursuant to  
subsection c. of this section or the municipal average, as the  
17 case may be.

i. The appraisals conducted pursuant to this section or the  
19 fair market value of land restricted to agricultural use shall not  
be used to increase the assessment and taxation of agricultural  
21 land pursuant the "Farmland Assessment Act of 1964,"  
P.L.1964, c.48 (C.54:4-23.1 et seq.).  
23 (cf: P.L.1988, c.4, s.3)

16. Section 25 of P.L.1983, c.32 (C.4:1C-32) is amended to  
25 read as follows:

27 25. a. No development easement purchased pursuant to the  
provisions of this act shall be sold, given, transferred or  
29 otherwise conveyed in any manner except in those cases when  
development easements have been purchased on land included in  
a farmland preservation program included in a sending zone  
31 established by a municipal development transfer ordinance  
adopted pursuant to P.L.19..., c.....(C.....) (pending before the  
33 Legislature as this bill).

b. Upon the purchase of the development easement by the  
35 board, the landowner shall cause a statement containing the  
conditions of the conveyance and the terms of the restrictions  
37 on the use and development of the land to be attached to and  
recorded with the deed of the land, in the same manner as the  
39 deed was originally recorded. These restrictions and conditions  
shall state that any development for nonagricultural purposes is



1 expressly prohibited, shall run with the land and shall be binding  
upon the landowner and every successor in interest thereto.

3 c. At the time of settlement of the purchase of a  
development easement, the landowner and the board may agree  
5 upon and establish a schedule of payment which provides that  
the landowner may receive consideration for the easement in a  
7 lump sum, or in installments over a period of up to 10 years  
from the date of settlement, provided that:

9 (1) If a schedule of installments is agreed upon, the State  
Comptroller shall retain in the fund an amount of money  
11 sufficient to pay the landowner pursuant to the schedule;

(2) The landowner shall receive annually interest on any  
13 unpaid balance remaining after the date of settlement. The  
interest shall accrue at a rate established in the installment  
15 contract.

(cf: P.L.1983, c.32, s.25)

17 17. (New section) Notwithstanding any other provision of this  
act or of any other applicable law, nothing in this act shall be  
19 construed to limit or foreclose the right of a sending zone  
transferor or a receiving zone transferee of a development  
21 transfer pursuant to this act to bargain, wholly or partially in  
lieu of a cash sale price, for an equitable interest in any  
23 development in which the transfer may be used.

Any contract or conveyance of development potential in  
25 which the consideration for the transaction is, in whole or in  
part, an equitable interest remaining in the grantor, shall be a  
27 recordable instrument to be recorded consistent with the  
applicable provisions of Title 46 of the Revised Statutes.

29 18. (New section) Agricultural land involved in an approved  
development transfer ordinance shall be provided the right to  
31 farm benefits under P.L.1983, c.32 (C.4:1C-11 et al.) and other  
benefits that may be provided pursuant to P.L.1983, c.31  
33 (C.4:1C-1 et al.).

19. (New section) a. The governing body of a municipality  
35 which adopts a development transfer ordinance shall annually  
prepare and submit a report on the operation of the development  
37 transfer ordinance to the county planning board.

b. The county planning board shall submit copies of these  
39 reports along with an analysis of the effectiveness of the  
ordinances in achieving the purposes of this act to the State

1 Planning Commission on July 1 of the third year next following  
enactment of this act.

3 c. The State Planning Commission shall submit, to the  
Governor, the President of the Senate, and to the Speaker of the  
5 General Assembly 90 days subsequent to receiving the report  
from the Burlington county planning board, copies of its analysis  
7 along with its recommendations as to the advisability of  
enacting transfer of development rights enabling legislation on a  
9 Statewide basis.

20. This act shall take effect immediately.

11

13

#### STATEMENT

15 This bill would establish a transfer of development rights  
program in Burlington County to demonstrate the feasibility of  
17 implementing such a program on a statewide basis. The bill  
would provide municipalities in Burlington County with  
19 increased authority to manage growth and development within  
their jurisdictions. Specifically it would provide a mechanism to  
21 enable municipalities, by ordinance, to transfer development  
potential from areas which require special protection, e.g.,  
23 farmland, woodland, floodplain, aquifer recharge area, natural  
habitats, recreation or parkland, or land which has unique  
25 aesthetic, architectural, or historic value, to areas that can  
absorb increased development without substantial adverse  
27 impact. Two or more municipalities would be permitted to  
provide for a joint program for development transfers.

29 Prior to the adoption of a development transfer ordinance a  
municipality must provide reports and plans which include an  
31 estimate of anticipated population and economic growth; an  
identification of all prospective sending and receiving zones; an  
33 estimate of land values of the sending zone; an estimate of  
existing and proposed infrastructure of the receiving zone; and  
35 an assessment of the real estate market in the general area and  
of the method to be used to convey the development transfer.  
37 The municipality is also required to develop application review  
incentives to facilitate the review of applications for  
39 development transfers. Development or conservation easements  
conveyed before the adoption ordinance may be included in the

1 sending zone if the municipality deems it in the public interest.

2 The county planning board, with the advice of the Burlington  
3 County Agriculture Development Board if agricultural land is  
4 involved, is directed to recommend approval or disapproval of  
5 the proposed ordinance. If the county planning board  
6 disapproves enactment of the ordinance, the municipality may  
7 petition the Office of State Planning to render a final  
8 determination. The Office of State Planning may approve,  
9 disapprove, or conditionally approve the ordinance.

10 The bill also authorizes Burlington County and its  
11 municipalities to establish development transfer banks,  
12 comprising five members, to underwrite the purchase, sale, or  
13 exchange of development potential. The banks could establish  
14 municipal average values which would generally reflect market  
15 value prior to the effective date of the development transfer  
16 ordinance.

17 The bill directs the Office of State Planning to provide  
18 technical assistance to municipalities in the development of the  
19 development potential transfer program.

20 Finally, the bill directs that a report be submitted concerning  
21 the feasibility of enacting a development rights program  
22 statewide.

23

25

## NATURAL RESOURCES

### Land Use and Planning

27

28 The "Burlington County Transfer of Development Rights  
29 Demonstration Act."

1 transfer pursuant to this act to bargain, wholly or partially in  
2 lieu of a cash sale price, for an equitable interest in any  
3 development in which the transfer may be used.

4 Any contract or conveyance of development potential in  
5 which the consideration for the transaction is, in whole or in  
6 part, an equitable interest remaining in the grantor, shall be a  
7 recordable instrument to be recorded consistent with the  
8 applicable provisions of Title 46 of the Revised Statutes.

9 18. (New section) Agricultural land involved in an approved  
10 development transfer ordinance shall be provided the right to  
11 farm benefits under P.L.1983, c.32 (C.4:1C-11 et al.) and other  
12 benefits that may be provided pursuant to P.L.1983, c.31  
13 (C.4:1C-1 et al.).

14 19. (New section) a. The governing body of a municipality  
15 which adopts a development transfer ordinance shall annually  
16 prepare and submit a report on the operation of the development  
17 transfer ordinance to the county planning board.

18 b. The county planning board shall submit copies of these  
19 reports along with an analysis of the effectiveness of the  
20 ordinances in achieving the purposes of this act to the State  
21 Planning Commission on July 1 of the third year next following  
22 enactment of this act.

23 c. The State Planning Commission shall submit, to the  
24 Governor, the President of the Senate, and to the Speaker of the  
25 General Assembly 90 days subsequent to receiving the report  
26 from the Burlington county planning board, copies of its analysis  
27 along with its recommendations as to the advisability of  
28 enacting transfer of development rights enabling legislation on a  
29 Statewide basis.

30 20. This act shall take effect immediately.

31

32 SPONSOR'S STATEMENT

33 This bill would establish a transfer of development rights  
34 program in Burlington County to demonstrate the feasibility of  
35 implementing such a program on a statewide basis. The bill  
36 would provide municipalities in Burlington County with  
37 increased authority to manage growth and development within  
38

39 A3637 (1989)

1 their jurisdictions. Specifically it would provide a mechanism to  
enable municipalities, by ordinance, to transfer development  
3 potential from areas which require special protection, e.g.,  
farmland, woodland, floodplain, aquifer recharge area, natural  
5 habitats, recreation or parkland, or land which has unique  
aesthetic, architectural, or historic value, to areas that can  
7 absorb increased development without substantial adverse  
impact. Two or more municipalities would be permitted to  
9 provide for a joint program for development transfers.

Prior to the adoption of a development transfer ordinance a  
11 municipality must provide reports and plans which include an  
estimate of anticipated population and economic growth; an  
13 identification of all prospective sending and receiving zones; an  
estimate of land values of the sending zone; an estimate of  
15 existing and proposed infrastructure of the receiving zone; and  
an assessment of the real estate market in the general area and  
17 of the method to be used to convey the development transfer.  
The municipality is also required to develop application review  
19 incentives to facilitate the review of applications for  
development transfers. Development or conservation easements  
21 conveyed before the adoption ordinance may be included in the  
sending zone if the municipality deems it in the public interest.

23 The county planning board, with the advice of the Burlington  
County Agriculture Development Board if agricultural land is  
25 involved, is directed to recommend approval or disapproval of  
the proposed ordinance. If the county planning board  
27 disapproves enactment of the ordinance, the municipality may  
petition the Office of State Planning to render a final  
29 determination. The Office of State Planning may approve,  
disapprove, or conditionally approve the ordinance.

31 The bill also authorizes Burlington County and its  
municipalities to establish development transfer banks,  
33 comprising five members, to underwrite the purchase, sale, or  
exchange of development potential. The banks could establish  
35 municipal average values which would generally reflect market  
value prior to the effective date of the development transfer  
37 ordinance.

The bill directs the Office of State Planning to provide

1 technical assistance to municipalities in the development of the  
development potential transfer program.

3 Finally, the bill directs that a report be submitted concerning  
the feasibility of enacting a development rights program  
5 statewide.

7

NATURAL RESOURCES

9

Land Use and Planning

11 The "Burlington County Transfer of Development Rights  
Demonstration Act."

**ASSEMBLY COMMITTEE ON CONSERVATION,  
NATURAL RESOURCES AND ENERGY**

STATEMENT TO

**ASSEMBLY, No. 3637**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 22, 1988

The Assembly Committee on Conservation, Natural Resources and Energy favorably reported Assembly Bill No. 3637.

This bill would establish a transfer of development rights program in Burlington County to demonstrate the feasibility of implementing such a program on a statewide basis. The bill would provide municipalities in Burlington County with increased authority to manage growth and development within their jurisdictions. Specifically it would provide a mechanism to enable municipalities, by ordinance, to transfer development potential from areas which require special protection, e.g., farmland, woodland, floodplain, aquifer recharge area, natural habitats, recreation or parkland, or land which has unique aesthetic, architectural, or historic value, to areas that can absorb increased development without substantial adverse impact. Two or more municipalities would be permitted to provide for a joint program for development transfers.

Prior to the adoption of a development transfer ordinance a municipality must provide reports and plans which include an estimate of anticipated population and economic growth; an identification of all prospective sending and receiving zones; an estimate of land values of the sending zone; an estimate of existing and proposed infrastructure of the receiving zone; and an assessment of the real estate market in the general area and of the method to be used to convey the development transfer. The municipality is also required to develop application review incentives to facilitate the review of applications for development transfers. Development or conservation easements conveyed before the adoption ordinance may be included in the sending zone if the municipality deems it in the public interest.

The county planning board, with the advice of the Burlington County Agriculture Development Board if agricultural land is involved, is directed to recommend approval or disapproval of the proposed ordinance. If the county planning board disapproves

enactment of the ordinance, the municipality may petition the Office of State Planning to render a final determination. The Office of State Planning may approve, disapprove, or conditionally approve the ordinance.

The bill also authorizes Burlington County and its municipalities to establish development transfer banks, comprising five members, to underwrite the purchase, sale, or exchange of development potential. The banks could establish municipal average values which would generally reflect market value prior to the effective date of the development transfer ordinance

The bill directs the Office of State Planning to provide technical assistance to municipalities in the development of the development potential transfer program.

Finally, the bill directs that a report be submitted concerning the feasibility of enacting a development rights program statewide.



SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3637

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1989

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 3637.

Assembly Bill No. 3637 would establish a transfer of development potential program in Burlington County to determine the feasibility of implementing such a program on a statewide basis. This bill would provide municipalities in Burlington County with increased authority to manage growth and development within their jurisdictions by establishing a procedure under which municipalities, by ordinance, could facilitate the transfer of development potential from areas which require special protection (farmland, woodland, floodplain, aquifer recharge area, natural habitats, recreation or parkland, or land which has unique aesthetic, architectural, or historic value) to areas that can absorb increased development without substantial adverse environmental impact. Two or more municipalities would be permitted to provide for a joint program for development transfers. The development transfer ordinance would designate sending zones and receiving zones, and would allow property owners in the receiving zone to sell any development potential attached to their property to a person who could use it in the receiving zone.

Prior to the adoption of a development transfer ordinance a municipality would be required to prepare reports and plans to determine the feasibility and practicability of a development transfer program. These reports would include an estimate of anticipated population and economic growth; an identification of all prospective sending and receiving zones; an estimate of land values of the sending zone; an estimate of existing and proposed infrastructure of the receiving zone; and an assessment of the real estate market in the general area and of the method to be used to convey the development transfer. The municipality is also required to develop application review incentives to facilitate the review of

applications for development transfers. Development or conservation easements conveyed before the adoption ordinance may be included in the sending zone if the municipality deems it in the public interest.

After the preliminary reports are prepared, a municipality would be authorized to prepare a development potential transfer ordinance, and submit it for review to the Burlington County planning board. If a municipality proposing to adopt a development transfer ordinance is located in the Pinelands area, it would also be required to submit the proposed ordinance to the Pinelands Commission for review. The county planning board, with the advice of the Burlington County Agriculture Development Board if agricultural land is involved, would be required to review the ordinance, and to approve or disapprove the adoption of the proposed ordinance. If the county planning board disapproves enactment of the ordinance, the municipality may petition the Office of State Planning to render a final determination. The Office of State Planning may approve, disapprove, or conditionally approve the ordinance.

This bill also authorizes Burlington County and its municipalities to establish development transfer banks, to be governed by boards comprising five members, to underwrite the purchase, sale, or exchange of development potential. The banks could establish municipal average values which would generally reflect market value prior to the effective date of the development transfer ordinance.

After a development transfer ordinance is adopted, a municipality would be required to review the performance of the development transfer ordinance after the third, sixth, and twelfth year of implementation. In general, if after the sixth year 30 % of the development potential in the sending district has not been transferred, and after the twelfth year 60%, the municipality would be required to repeal the ordinance.

This bill also directs the Office of State Planning to provide technical assistance to municipalities in the development of the development potential transfer program. In addition, this bill directs the Office of State Planning to submit a report to the Governor and the Legislature containing an analysis of the Burlington County development potential transfer program, and recommendations as to the advisability of establishing such a program on a Statewide basis.



OFFICE OF THE GOVERNOR

**NEWS RELEASE**

Governor Thomas H. Kean  
TRENTON, N.J. 08625  
Release: MON., 6/5/89

CN-001

Contact: CARL GOLDEN 609-292-8956 OR 609-292-6000 EXT. 207  
CAROL SHIPP 609-292-8896

Governor Thomas H. Kean and Agriculture Secretary Arthur R. Brown, Jr. today saved 627 acres of Burlington County farmland from development when the development rights of four farms were purchased under the state and county Farmland Preservation Program.

During ceremonies in Chesterfield, the Governor also signed into law a bill that creates another tool that certain municipalities in Burlington County can use to preserve farmland, known as transfer of development rights. The bill A-3637/S-3099, was sponsored by Assemblyman Robert Shinn, R-Burlington and Senator Catherine Costa, D-Burlington.

The 80 acre Schumann farm in Springfield, 77 acre Van Mater farm in Mansfield, 91 acre Homa farm in Chesterfield and 379 acre Black farm in Chesterfield entered the Farmland Preservation Program today. This brings the state total number of acres with development rights purchased to more than 3,300 and the acres protected for at least 8 years to over 28,000.

The farmland preservation purchases and bill signing took place exactly four years from the date of the first farm entering the state's farmland preservation program.

"I don't want our children and grandchildren to have to look at a history book to know what a farm or agriculture is about," said the Governor. "Farmland preservation has been and will continue to be a top priority."

"Agriculture gives us much more than food to eat," said Kean. "It adds to the quality of life we enjoy here in New Jersey and we must preserve farmland and farming if that quality is to be maintained."

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The development rights of the four farms were purchased for a total of \$3.3 million, with the state contributing \$2.6 million and Burlington County paying the remainder.

A restriction will be placed on the deeds of the farms, preventing development in the future on the acres entered into the program.

"The commitment of these farming families represents the spirit that is keeping agriculture thriving here in the Garden State," said Brown. "They see the future advantages of agriculture and are demonstrating their commitment to that future by ensuring their land remains in agriculture."

He commented that the Anna Black farm has been in the family since 1730 and was recently awarded a Bicentennial Farm award by the U.S. Department of Agriculture.

The purchase price of the development rights is based on the difference between the development value and the agricultural value.

In addition to the 3,300 acres under permanent protection, some 17,000 additional acres have received preliminary approval for the purchase of development rights.

Both Kean and Brown cited the need for continued funding for farmland preservation. They said they expect a Green Acres and Farmland Preservation bond issue will be on the ballot in November which, if approved, would provide continued funding for the purchase of development rights.

In other actions today, the Transfer of Development Rights (TDR) bill signed into law will establish a pilot project in Burlington County which will provide yet another land use management tool in the effort to stem the loss of farmland in the state.

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Under the bill, certain Burlington County municipalities with high development pressures will participate. Agricultural areas within those municipalities will be designated and the development potential of the area will be removed in exchange for transfer credits.

Contractors or others in the private market then purchase these credits to be able to build on land designated as growth areas at increased densities.

In this way, farmland and open space are retained with the cost of the preservation shared by the private market.

"Clearly, more than one preservation tool is needed to retain the state's agricultural resources," said Brown. "This pilot TDR project will give us an opportunity to test the concept on a limited scale to determine if it is a viable policy for the future."

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