

13:8B-1 to 13:8B-9

LEGISLATIVE HISTORY CHECKLIST

WJSA 13:8B-1 to 13:8B-9 ("Conservation Restriction and Historic Preservation Restriction")

LAWS OF 1979 CHAPTER 378

Bill No. A480

Sponsor(s) Froude

Date Introduced Pre-filed

Committee: Assembly Agriculture and Environment

Senate Energy and Environment

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly June 21, 1979

Senate Sept. 10, 1979

Date of approval Feb. 5, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly Yes ~~xxx~~

Senate ~~Yes~~ No

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~xxx~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

378

2-5-80

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[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 480

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblyman FROUDE

AN ACT concerning the acquisition, enforcement and disposition of conservation restrictions **and historic preservation restrictions** by governmental bodies and by certain corporations and trusts, and supplementing Title 13 of the Revised Statutes.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Conservation Restriction **and Historic Preservation Restriction**
3 Act."

1 2. As used in this act:

2 a. "Charitable conservancy" means a corporation or trust whose
3 purposes include the acquisition and preservation of land or water
4 areas or of a particular land or water area, or either thereof, in a
5 natural, scenic or open condition, no part of the net earnings of
6 which inures to the benefit of any private shareholder or individual,
7 and which has received tax exemption under section 501 (c) of the
8 1954 Internal Revenue Code;

9 b. "Conservation restriction" means an interest in land less
10 than fee simple absolute, stated in the form of a right, restriction,
11 easement, covenant, or condition, in any deed, will or other instru-
12 ment, other than a lease, executed by or on behalf of the owner
13 of the land, appropriate to retaining land or water areas pre-
14 dominantly in their natural, scenic or open or wooded condition,
15 or for conservation of soil or wildlife, or for outdoor recreation or
16 park use, or as suitable habitat for fish or wildlife, to forbid or
17 limit any or all:

18 (1) Construction or placing of buildings, roads, signs, billboards
19 or other advertising, or other structures on or above the ground;

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

20 (2) Dumping or placing of soil or other substance or material as
 21 landfill, or dumping or placing of trash, waste or unsightly or
 22 offensive materials;

23 (3) Removal or destruction of trees, shrubs or other vegetation;

24 (4) Excavation, dredging or removal of loam, peat, gravel, soil,
 25 rock or other mineral substance;

26 (5) Surface use except for purposes permitting the land or
 27 water area to remain predominantly in its natural condition;

28 (6) Activities detrimental to drainage, flood control, water con-
 29 servation, erosion control or soil conservation, or fish and wildlife
 30 habitat preservation;

31 (7) Other acts or uses detrimental to the retention of land or
 32 water areas according to the purposes of this act.

33 c. "Local unit" means a municipality, county or other political
 34 subdivision of this State, or any agency thereof.

35 *d. "Historic preservation restriction" means an interest in
 36 land less than fee simple absolute, stated in the form of a right,
 37 restriction, easement, covenant, or condition, in any deed, will or
 38 other instrument, other than a lease, executed by or on behalf of
 39 the owner of the land, appropriate to preserving a structure or site
 40 which is historically significant for its architecture, archeology or
 41 associations, to forbid or limit any or all:

42 (1) Alteration in exterior or interior features of such structure;

43 (2) Changes in appearance or condition of such site;

44 (3) Uses of such structure or site which are not historically
 45 appropriate;

46 (4) Other acts or uses detrimental to the appropriate preserva-
 47 tion of such structure or site.*

1 3. A conservation restriction *or an historic preservation restric-
 2 tion* may be acquired by the Commissioner of Environmental Pro-
 3 tection in the name of State, or by any local unit, or by any charit-
 4 able conservancy in the same manner as other interests in land may
 5 be acquired by gift, purchase or devise and, in the case of the State
 6 or local unit, by condemnation. Such *[a restriction]* *restric-
 7 tions* may be enforced in the same manner as other interests in
 8 land, and shall entitle representatives of the holder of such restric-
 9 tion to enter the land or water area involved in a reasonable manner
 10 and at reasonable times so as to assure compliance with the pro-
 11 visions of said restriction.

1 4. No conservation restriction *or an historic preservation
 2 restriction* held by the State or a local unit or by a charitable
 3 conservancy, shall be unenforceable by reason of lack of privity of
 4 estate or contract, or lack of benefit to particular land, or an

5 account of the benefit being assignable or being assigned to any
 6 other governmental body or charitable conservancy with like
 7 purposes. All such restrictions shall be duly recorded and in-
 8 dexed in the registry of deeds for the county where the land
 8A lies so as to affect its title, in the manner of other conveyances of
 9 interests in land, and shall describe the land subject to said restric-
 10 tions by adequate legal description or by reference to a recorded
 11 plan showing its boundaries.

1 5. A conservation restriction **or an historic preservation*
 2 *restriction** may be released in whole or in part, by the holder
 3 thereof, for such consideration, if any, as the holder may determine,
 4 in the same manner as the holder may dispose of other interests
 5 in land, subject to such conditions as may have been imposed at the
 6 time of creation of the restriction; provided, however, that prior to
 7 any release, a public hearing shall be held, after notice by publica-
 8 tion thereof at least twice in each of the 3 weeks next preceding the
 9 date of such hearing in a newspaper of general circulation in the
 10 municipality or municipalities in which the land is situated. The
 11 hearing shall be held by the governmental body holding the restric-
 12 tion, or if held by a charitable conservancy, by the governing body
 13 of the municipality in which the land is situated.

1 **6. The provisions of section 5 of this act notwithstanding, no*
 2 *conservation restriction acquired pursuant to this act shall be re-*
 3 *leased without the approval of the Commissioner of Environ-*
 4 *mental Protection. Approval of releases shall be evidenced by*
 5 *certificates of the Commissioner of Environmental Protection and*
 6 *shall be recorded in the same manner as the restriction itself. In*
 7 *determining whether the release should be approved, the Commis-*
 8 *sioner of Environmental Protection shall take into consideration*
 9 *the public interest in preserving these lands in their natural state,*
 10 *and any State, regional or local program in furtherance thereof,*
 11 *as well as any State, regional or local comprehensive land use or*
 12 *development plan affecting such property.*

1 7. *The existence of any conservation restriction of historical*
 2 *preservation restriction acquired pursuant to this act shall be con-*
 3 *sidered by local assessors in establishing the full value of any*
 4 *lands subject to such restriction.**

1 ***[6.]* *8.*** Nothing in this act shall be construed to imply that
 2 any restriction, easement, covenant, or condition which does not
 3 have the benefit of this act, on account of any provision hereof, is
 4 unenforceable. Nothing in this act shall diminish the powers
 5 granted by any general or special law to acquire by purchase,

6 gift, eminent domain or otherwise and to use land for public
7 purposes.

1 ***[7.]*** *9.* If any clause, sentence, paragraph, section or part of
2 this act shall be adjudged by any court of competent jurisdiction to
3 be invalid, such judgment shall not affect, impair or invalidate the
4 remainder thereof, but shall be confined in its operation to the
5 clause, sentence, paragraph, section or part thereof directly
6 involved in the controversy in which such judgment shall have been
7 rendered.

1 ***[8.]*** *10.* This act shall take effect immediately.

10 the land is situated. The hearing shall be held by the governmental
 11 body holding the restriction, or if held by a charitable conservancy,
 12 by the governing body of the municipality in which the land is
 13 situated.

1 6. Nothing in this act shall be construed to imply that any
 2 restriction, easement, covenant, or condition which does not have
 3 the benefit of this act, on account of any provision hereof, is
 4 unenforceable. Nothing in this act shall diminish the powers
 5 granted by any general or special law to acquire by purchase,
 6 gift, eminent domain or otherwise and to use land for public
 7 purposes.

1 7. If any clause, sentence, paragraph, section or part of this act
 2 shall be adjudged by any court of competent jurisdiction to be
 3 invalid, such judgment shall not affect, impair or invalidate the
 4 remainder thereof, but shall be confined in its operation to the
 5 clause, sentence, paragraph, section or part thereof directly
 6 involved in the controversy in which such judgment shall have been
 7 rendered.

1 8. This act shall take effect immediately.

SPONSORS' STATEMENT

This bill would permit individual landowners to assign conserva-
 tion restrictions to the State, to county and municipal governments,
 and to certain corporations and trusts whose purposes include the
 acquisition and preservation of land. Such restrictions are inter-
 ests in land, less than full thereto, which provide for the retention
 of land or water areas predominantly in their natural state, or to
 be used for conservation or recreation purposes.

This bill further provides procedures for the enforcement and
 release of such restrictions.

A. 480 (1979)

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 480

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 1979

This bill, as amended by the committee authorizes the assignment of conservation and historic preservation restrictions by landowners to State or local governmental units or charitable conservancies, as defined in the bill. Such restrictions are interests in the land less than fee simple absolute which insure that the land governed by the restriction will be maintained in its natural or historic integrity, and authorizes the assignee to enforce the restriction, notwithstanding lack of privity of estate or contract.

This bill, as amended, also provides that no such restriction may be released without the holding of a public hearing, and approval by the Commissioner of Environmental Protection, upon his determination that such release would be in the public interest and consistent with State regional, and local land use plans.

Finally, the committee amended the bill to provide that local assessors shall consider any conservation restriction in establishing the value of the land for tax purposes. This amendment is consistent with a recent decision of the Division of Tax Appeals (*Fincher, et al. v. Township of Bethlehem*) which held that lands encumbered by conservation easements should be assessed on a case-by-case basis.

From The Office of the Governor

2-6-80

-5-

A-480, sponsored by former Assemblyman John Froude (D-Middlesex), provides for the acquisition, enforcement and disposition of conservation and historic preservation restrictions by government bodies or certain corporations or trusts in situations which concern the acquisition or preservation of land or water areas.

Conservation restrictions provide that land or water areas are to be predominately retained in their natural, scenic, open or wooded condition or are to be used for conservation or recreation purposes.

Historic preservation restrictions help preserve a structure or site which is historically significant for its architecture, archeology or associations.

Although these restrictions could be conveyed in sales of real property under prior law, this bill establishes rules for their acquisition, enforcement and disposition.

The bill supports the long-established policy of the state in encouraging the preservation of open space and also helps create recreational areas and preserve areas which have public value for their natural beauty or historical significance while allowing the land to remain in private ownership.

A-3669, sponsored by Assemblyman Martin A. Herman (D-Gloucester), which validates the school bond authorization proceedings by the Board of Education of Pittsgrove Township in Salem County.

A-949, sponsored by Assemblyman James W. Bornheimer (D-Middlesex), which requires every homeowner insurance policy and every insurance policy providing comprehensive liability insurance to include workers compensation coverage for domestic servants, household employees and their dependents.

Under prior practice, workers' compensation coverage was often available as an optional endorsement to homeowners' policies, but not from all companies.

A-3271, sponsored by Assemblyman Michael J. Matthews (D-Atlantic), which makes a minor technical change in the statutes regarding the Pharmaceutical Assistance to the Aged (PAA) program.

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