

40:12-16

LEGISLATIVE HISTORY CHECKLIST  
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("Farmland Preservation Installment  
Purchase Act")

NJSA: 40:12-16

LAWS OF: 1992 CHAPTER: 157

BILL NO: A341

SPONSOR(S) Ogden and Lance

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: environment  
SENATE: Senior Citizens

AMENDED DURING PASSAGE: Yes Assembly Committee Substitute  
(2R) enacted

DATE OF PASSAGE: ASSEMBLY: June 25, 1992  
SENATE: October 15, 1992

DATE OF APPROVAL: November 25, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

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MESSAGE ON SIGNING: No

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REPORTS: Yes

HEARINGS: No

974.90 New Jersey. Legislature. Assembly. Republican Policy  
R336 Committee. Task Force on Open Space.  
1990a Open space and farmland preservation: agenda for action.  
December, 1990. Trenton, 1990.  
[see pp. 13-14 -- attached]

KEG:FP

[SECOND REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 341**

**STATE OF NEW JERSEY**

ADOPTED JUNE 8, 1992

Sponsored by Assemblywoman OGDEN and Assemblyman LANCE

1 AN ACT concerning <sup>2</sup>the acquisition of<sup>2</sup> farmland preservation  
2 <sup>2</sup>[, authorizing the acquisition by counties of farmland]  
3 easements and other interests in real property<sup>2</sup> by installment  
4 purchase <sup>2</sup>[agreement under certain circumstances]  
5 agreements<sup>2</sup>, amending P.L.1971, c.199 <sup>2</sup>[, <sup>1</sup>N.J.S.40A:2-2,  
6 N.J.S.40A:2-11,<sup>1</sup> N.J.S.40A:2-22, and N.J.S.40A:2-27,  
7 <sup>1</sup>amending] and<sup>2</sup> P.L. 1983, c.32,<sup>1</sup> and amending and  
8 supplementing P.L.1989, c.30.  
9

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

12 1. Section 1 of P.L.1989, c.30 (C.40:12-16) is amended to read  
13 as follows:

14 1. The governing body of any county in which the voters of the  
15 county have approved, in a general or special election, a  
16 proposition authorizing the acquisition of lands for conservation  
17 as open space <sup>1</sup>[and/or] or<sup>1</sup> as farmland, may annually raise by  
18 taxation, including for purpose of debt service payments on  
19 indebtedness issued for the acquisition of open space <sup>1</sup>[and/or]  
20 or<sup>1</sup> farmland, a sum not to exceed the amount or rate set forth in  
21 the proposition approved by the voters, for the acquisition of land  
22 or water areas, and any existing improvements thereon, within  
23 the county for conservation as open space <sup>1</sup>[and/or] or<sup>1</sup> as  
24 farmland. Amounts raised by taxation hereunder shall be  
25 deposited in a county open space and farmland preservation trust  
26 fund and shall be used exclusively for the acquisition of open  
27 space <sup>1</sup>[areas and/or] or<sup>1</sup> farmland. Separate accounts may be  
28 created within the county open space and farmland preservation  
29 trust fund for the deposit of revenue to be expended for the  
30 acquisition of open space areas and for the deposit of revenue to  
31 be expended for the acquisition of farmland. Selection of open  
32 space <sup>1</sup>[areas]<sup>1</sup> for acquisition shall be in accordance with a park,  
33 recreational and open space plan prepared and adopted by the  
34 county. Revenue to be expended for the acquisition of farmland  
35 may be expended pursuant to a farmland preservation plan  
36 prepared and adopted by the county or pursuant to the provisions  
37 of the "Agriculture Retention and Development Act," P.L.1983,  
38 c.32 (C.4:1C-11 et al.) or any other law [adopted by the  
39 Legislature] enacted for the purpose of preserving farmland.

40 Whenever the county shall determine that it is necessary that  
41 any public utility facilities such as tracks, pipes, mains, conduits,

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 SSV committee amendments adopted July 20, 1992.

<sup>2</sup> Senate floor amendments adopted October 5, 1992.

1 cables, wires, towers, poles and other equipment and appliances  
2 of any public utility, as defined in R.S.48:2-13, which are now, or  
3 hereafter may be, located in, on, along, over or under any open  
4 space <sup>1</sup>[area]<sup>1</sup> acquired by the county, should be removed from  
5 such area, the public utility owning or operating such facilities  
6 shall relocate or remove the same in accordance with the open  
7 space plan prepared and adopted by the county; except that the  
8 cost and expenses of such relocation or removal, including the  
9 cost of installing such facilities in a new location or new  
10 locations, and the cost of any lands, or any rights or interests in  
11 lands, and any other rights acquired to accomplish such relocation  
12 or removal, less the cost of any lands or any rights of the public  
13 utility paid to the public utility in connection with the relocation  
14 or removal of such property, shall be ascertained and paid by the  
15 county as a part of the cost of the acquisition. In case of any  
16 such relocation or removal of facilities, as aforesaid, the public  
17 utility owning or operating the same, its successors or assigns,  
18 may maintain and operate such facilities, with the necessary  
19 appurtenances, in the new location, for as long a period, and upon  
20 the same terms and conditions, as it had the right to maintain and  
21 operate such facilities in their former location.

22 As used in this act:

23 "Acquisition" means the securing of a fee simple absolute or a  
24 lesser interest in land or water areas, including easements  
25 restricting development, by gift, purchase, devise, installment  
26 purchase agreement, or condemnation.

27 "Farmland" means land actively devoted to agricultural or  
28 horticultural use that is valued, assessed and taxed pursuant to  
29 the "Farmland Assessment Act of 1964," P.L.1964, c.48  
30 (C.54:4-23.1 et seq.).

31 "Open space" means land or water areas to be retained in a  
32 largely natural or undeveloped state, for purposes of, among  
33 other things, providing parkland or green spaces, protecting  
34 ecologically sensitive areas, preserving flora and wildlife, or  
35 protecting or preserving areas of scenic, historic and cultural  
36 value, while at the same time affording, whenever practicable,  
37 public outdoor recreational opportunities for the county's  
38 residents. "Open space" may include a recreational area such as  
39 a golf course if the acquisition subserves the objective of this act  
40 of protecting a largely undeveloped area from future  
41 development.

42 (cf: P.L.1991, c.283, s.2)

43 <sup>1</sup>2. Section 2 of P.L.1989, c.30 (C.40:12-17) is amended to  
44 read as follows:

45 2. Land or water areas, and any improvements thereon,  
46 acquired pursuant to this act shall be held in a county open space  
47 and farmland preservation trust and shall be used exclusively for  
48 purposes authorized under this act.

49 Upon a finding that the purposes of this act might otherwise be  
50 better served or that an open space [and/or] or farmland area is  
51 required for another public use, which finding shall be set forth in  
52 a resolution adopted by the governing body of the county, the  
53 governing body may convey, through sale, exchange or other  
54 disposition, title to, or a lesser interest in, an open space [and/or]

1 or farmland area acquired under this act and described in the  
2 resolution, provided the governing body shall replace any open  
3 space [and/or] or farmland conveyed under this section by land or  
4 water areas at least equal in size to the open space [and/or] or  
5 farmland area conveyed, and any monies derived from the  
6 conveyance shall be deposited in the county open space and  
7 farmland preservation trust fund for use in the acquisition of  
8 open space [and/or] or farmland. Conveyance shall be made in  
9 accordance with the "Local Lands and Buildings Law," P.L.1971,  
10 c.199 (C.40A:12-1 et seq.). In the event of conveyance by  
11 exchange, the land or water area to be transferred to the county  
12 open space and farmland preservation trust shall be at least equal  
13 in value to that of the property conveyed from the trust.<sup>1</sup>

14 (cf: P.L.1991, c.283, s.3)

15 <sup>1</sup>3. Section 3 of P.L.1989, c.30 (C.40:12-18) is amended to  
16 read as follows:

17 3. Amounts raised by taxation for the acquisition of open  
18 space [and/or] or farmland pursuant to this act shall be  
19 apportioned by the county board of taxation among the  
20 municipalities within the county in accordance with R.S.54:4-49.  
21 The amounts so apportioned shall be assessed, levied and  
22 collected in the same manner and at the same time as other  
23 county taxes. The tax collected hereunder shall be referred to as  
24 the "County Open Space and Farmland Preservation Trust Fund  
25 Tax."<sup>1</sup>

26 (cf: P.L.1991, c.283, s.4)

27 <sup>2</sup>[<sup>1</sup>2.] 4.<sup>1</sup> N.J.S.40A:2-22 is amended to read as follows:

28 40A:2-22. The governing body of the local unit shall determine  
29 the period of usefulness of any purpose according to its  
30 reasonable life computed from the date of the bonds, which  
31 period shall not be greater than the following:

32 a. Buildings and structures.

33 1. Bridges, including retaining walls and approaches, or  
34 permanent structures of brick, stone, concrete or metal, or  
35 similar durable construction, 30 years.

36 2. Buildings, including the original furnishings and equipment  
37 therefor:

38 Class A: A building, of which all walls, floors, partitions, stairs  
39 and roof are wholly of incombustible material, except the window  
40 frames, doors, top flooring and wooden handrails on the stairs, 40  
41 years;

42 Class B: A building, the outer walls of which are wholly of  
43 incombustible material, except the window frames and doors, 30  
44 years;

45 Class C: A building which does not meet the requirements of  
46 Class A or Class B, 20 years.

47 3. Buildings or structures acquired substantially reconstructed  
48 or additions thereto, one-half the period fixed in this subsection  
49 for such buildings or structures.

50 4. Additional furnishings, five years.

51 b. Marine improvements.

52 1. Harbor improvements, docks or marine terminals, 40 years.

53 2. Dikes, bulkheads, jetties or similar devices of stone,  
54 concrete or metal, 15 years; of wood or partly of wood, 10 years.

- 1 c. Additional equipment and machinery.
- 2 1. Additional or replacement equipment and machinery, 15
- 3 years.
- 4 2. Voting machines, 15 years.
- 5 d. Real property.
- 6 1. Acquisition for any public purpose of lands <sup>1</sup>, easements<sup>1</sup> or
- 7 riparian rights, <sup>1</sup>[or both,]<sup>1</sup> and the original dredging, grading,
- 8 draining or planting thereof, 40 years.
- 9 2. Improvement of airport, cemetery, golf course, park,
- 10 playground, 15 years.
- 11 3. Stadia of concrete or other incombustible materials, 20
- 12 years.
- 13 e. Streets or thoroughfares.
- 14 1. Elimination of grade crossings, 35 years.
- 15 2. Streets or roads:
- 16 Class A: Rigid pavement. A pavement of not less than eight
- 17 inches of cement concrete or a six-inch cement concrete base
- 18 with not less than three-inch bituminous concrete surface course,
- 19 or equivalent wearing surface, 20 years.
- 20 Flexible pavement. A pavement not less than 10 inches in
- 21 depth consisting of five-inch macadam base, three-inch modified
- 22 penetration macadam and three-inch bituminous concrete surface
- 23 course or other pavements of equivalent strength, in accordance
- 24 with the findings of the American Association of State Highway
- 25 Officials (AASHO) Road Test, 20 years.
- 26 Class B: Mixed surface-treated road. An eight-inch surface of
- 27 gravel, stone or other selected material under partial control
- 28 mixed with cement or lime and fly ash, six inches in compacted
- 29 thickness with bituminous surface treatment and cover, 10 years.
- 30 Bituminous penetration road. A five-inch gravel or stone base
- 31 course and a three-inch course bound with a bituminous or
- 32 equivalent binder, 10 years.
- 33 Class C: Mixed bituminous road. An eight-inch surface of
- 34 gravel, stone, or other selected material under partial control
- 35 mixed with bituminous material one inch or more in compacted
- 36 thickness, five years.
- 37 Penetration macadam road. A road of sand, gravel or
- 38 water-bound macadam, or surfacing with penetration macadam,
- 39 five years.
- 40 3. Sidewalks, curbs and gutters of stone, concrete or brick, 10
- 41 years.
- 42 The period of usefulness in this subsection shall apply to
- 43 construction and reconstruction of streets and thoroughfares.
- 44 f. Utilities and municipal systems.
- 45 1. Sewerage system, whether sanitary or storm water, water
- 46 supply or distribution system, 40 years.
- 47 2. Electric light, power or gas systems, garbage, refuse or
- 48 ashes incinerator or disposal plant, 25 years.
- 49 3. Communication and signal systems, 10 years.
- 50 4. House connections to publicly-owned gas, water or
- 51 sewerage systems from the service main in the street to the curb
- 52 or property lines where not part of original installation, five
- 53 years.
- 54 g. Vehicles and apparatus.

1 1. Fire engines, apparatus and equipment, when purchased  
2 new, but not fire equipment purchased separately, 10 years.

3 2. Automotive vehicles, including original apparatus and  
4 equipment (other than passenger cars and stationwagons), when  
5 purchased new, five years.

6 3. Major repairs, reconditioning or overhaul of fire engines and  
7 apparatus, which may reasonably be expected to extend for at  
8 least five years the period of usefulness thereof, five years.

9 h. The closure of a sanitary landfill facility utilized, owned or  
10 operated by a county or municipality, 15 years; provided that the  
11 closure has been approved by the [Board of Public Utilities and  
12 the] Department of Environmental Protection. For the purposes  
13 of this subsection "closure" means all activities associated with  
14 the design, purchase or construction of all measures required by  
15 the Department of Environmental Protection, pursuant to law, in  
16 order to prevent, minimize or monitor pollution or health hazards  
17 resulting from sanitary landfill facilities subsequent to the  
18 termination of operations at any portion thereof, including, but  
19 not necessarily limited to, the costs of the placement of earthen  
20 or vegetative cover, and the installation of methane gas vents or  
21 monitors and leachate monitoring wells or collection systems at  
22 the site of any sanitary landfill facility.

23 <sup>1</sup>[i. A development easement on farmland acquired by the  
24 governing body of a county by installment purchase agreement  
25 pursuant to the provisions of P.L. , c. (C. ) (now before the  
26 Legislature as this bill), and in accordance with the provisions of  
27 the "Local Lands and Buildings Law," P.L.1971, c.199  
28 (C.40A:12-1 et seq.), 30 years.

29 [i.] j.] i.<sup>1</sup> Any purpose, except vehicles, not included in the  
30 foregoing, for which obligations may be issued, 15 years.  
31 (cf: P.L.1985, c.153, s.2)]<sup>2</sup>

32 <sup>2</sup>[<sup>1</sup>[3.] 5.<sup>1</sup> N.J.S.40A:2-27 is amended to read as follows:

33 40A:2-27. All bonds shall be sold at public sale upon sealed  
34 proposals, except that bonds may be sold at private sale:

35 a. Without any previous public offering

36 (1) if constituting all or part of an authorized issue of  
37 \$100,000.00 or less, or

38 (2) if sold to any board, body, agency, commission,  
39 instrumentality, district, authority or political subdivision of any  
40 local unit, or of the State, or of the Federal Government; [or]

41 b. If no legally acceptable bid is received at advertised public  
42 offering, such bonds or any of them may be sold within 30 days  
43 after the advertised date for public bidding, provided, however,  
44 that no bonds shall bear interest at any rate of interest which is  
45 higher than the rate or maximum rate specified in the notice of  
46 sale, nor contain substantially different provisions from those  
47 specified in said notice; or

48 c. If the obligations to be sold are for the purpose of financing  
49 the acquisition <sup>1</sup>[by the governing body of a county]<sup>1</sup> of <sup>1</sup>land or<sup>1</sup>  
50 development easements on <sup>1</sup>[farmland] land<sup>1</sup> by installment  
51 purchase agreements pursuant to the provisions of P.L. , c.  
52 (C. ) (now before the Legislature as this bill), and in accordance  
53 with the provisions of the "Local Lands and Buildings Law,"  
54 P.L.1971, c.199 (C.40A:12-1 et seq.).

1 Any purchaser of bonds at private sale, other than a public  
2 body <sup>1</sup>or other than purchasers of obligations sold for the  
3 purposes of financing the acquisition of land or development  
4 easements on land by installment purchase agreements<sup>1</sup>, shall  
5 deposit a certified or cashier's or treasurer's check drawn upon a  
6 bank or trust company in an amount equal to 5% of the amount of  
7 bonds purchased and such amount shall be applied as in the case  
8 of a deposit made at public sale.

9 Any private sale of bonds shall be made or confirmed by  
10 resolution of the governing body adopted by not less than a 2/3  
11 vote of the full membership thereof, setting forth the date,  
12 maturities, interest rate and price of the bonds and the name of  
13 the purchaser.

14 (cf: P.L.1981, c.111, s.1)]<sup>2</sup>

15 <sup>1</sup>[4.] <sup>2</sup>[6.1]<sup>4.2</sup> Section 2 of P.L.1971, c.199 (C.40A:12-2) is  
16 amended to read as follows:

17 2. Definitions. The following words shall have the following  
18 meanings, unless the context clearly indicates the contrary:

19 (a) "Acquire" shall include acquisition by gift, devise,  
20 purchase, <sup>2</sup>[installment purchase agreement pursuant to the  
21 provisions of P.L. , c. (C. ) (now before the Legislature as  
22 this bill),]<sup>2</sup> exchange, grant, lease, <sup>2</sup>[or]<sup>2</sup> condemnation, <sup>2</sup>or  
23 installment purchase agreement<sup>2</sup> unless otherwise indicated.

24 (b) "Buildings" shall include any building or buildings and any  
25 structures, improvements, ingress or egress, grounds or plazas,  
26 necessary and incidental to the purpose of the building and the  
27 safety, comfort and well-being of its occupants.

28 (c) "Capital improvements" shall include, in addition to  
29 buildings, any structures, fixtures, edifices, byways, parking lots,  
30 service facilities, and any other facility necessary and incidental  
31 to the lawful performance of any function of a county or  
32 municipality.

33 (d) "County" means any county of this State of whatever class.

34 (e) "Municipality" means any town, township, borough, village  
35 or city of whatever class heretofore or hereafter created under  
36 general or special charter.

37 (f) "Personal property" shall mean any personal property  
38 necessary and incidental to the furnishing, refurbishing or  
39 refurbishing of a building.

40 (g) "Real property" shall include, in addition to the usual  
41 connotations thereof, <sup>2</sup>development rights or easements, or<sup>2</sup> any  
42 right, interest or estate in the area extending above any real  
43 property, or capital improvement thereon, to such a height or  
44 altitude as any title, interest or estate in real property may  
45 extend, commonly known as "air rights."

46 (h) "Resolution" or "ordinance" when used in connection with  
47 the action of a county or municipality means a resolution or  
48 ordinance adopted by the governing body of the county or  
49 municipality. In any case in which a resolution or ordinance  
50 authorizing the expenditure of public moneys is required to be  
51 approved by any other board, body or commission of the State,  
52 county or municipality, "resolution" or "ordinance" shall mean  
53 also adopted or approved by the board, body or commission  
54 authorized to take such action on behalf of the State, county or

1 municipality.

2 (i) "Sale" shall include the conveyance of any estate, interest,  
3 easement or title to, or the waiver, release, or modification of  
4 any conditions, restrictions or limitations on any real property,  
5 capital improvement or personal property of the county or  
6 municipality, but shall not include any lease or exchange of such  
7 property.

8 (cf: P.L.1971, c.199, s.2)

9 25. Section 5 of P.L.1971, c.199 (C.40A:12-5) is amended to  
10 read as follows:

11 5. (a) Any county, by resolution, or any municipality, by  
12 ordinance, may provide for the acquisition of any real property,  
13 capital improvement, or personal property:

14 (1) By purchase, gift, devise, lease, exchange, [or]  
15 condemnation, or installment purchase agreement;

16 (2) Subject to lawful conditions, restrictions or limitations as  
17 to its use by the county or municipality, provided the governing  
18 body accepts such lawful conditions, restrictions or limitations.  
19 When any county or municipality shall have acquired any real  
20 property, capital improvement or personal property upon any  
21 lawful condition, restriction or limitation, it is hereby authorized  
22 to take such steps as may be necessary and proper to the  
23 compliance by the county or municipality with such lawful  
24 conditions, restrictions or limitations;

25 (3) Whether the acquisition of any real property is by lease,  
26 purchase, installment purchase agreement or exchange, the  
27 governing body may require the construction or repair of any  
28 capital improvement as a condition of acquisition.

29 (b) To the extent that the acquisition is by an installment  
30 purchase agreement, the obligation of the county or municipality  
31 shall be valid and binding for the term thereof which shall not be  
32 greater than 40 years and shall not be otherwise subject to annual  
33 appropriation, and the authorization of such obligation shall not  
34 be subject to any of the provisions of the "Local Bond Law,"  
35 (N.J.S.40A:2-1 et seq.), except that

36 (1) the repayment schedule of the principal shall be consistent  
37 with the requirements of N.J.S.40A:2-26 et seq., unless otherwise  
38 approved by the Local Finance Board within the Division of Local  
39 Government Services in the Department of Community Affairs,

40 (2) a supplemental debt statement reflecting the principal sum  
41 of the installment purchase agreement shall be filed consistent  
42 with the provisions of N.J.S.40A:2-10; and

43 (3) to the extent that such supplemental debt statement  
44 reflects debt in excess of the debt limitations imposed on  
45 counties or municipalities, as appropriate, by N.J.S.40A:2-6 and  
46 not otherwise within the exceptions contained in N.J.S.40A:2-7,  
47 the county or municipality must obtain the approval of the Local  
48 Finance Board.

49 [(b)]c. Any county or municipality having acquired any real  
50 property, capital improvement or personal property or any real  
51 estate or interest therein, which acquisition or estate or interest  
52 shall have become unsuited or inconvenient for the use for which  
53 it was acquired, may, at any time convert a portion or the whole  
54 thereof to any other public use unless otherwise provided by law



1 or by the terms of acquisition.

2 [(c)d. Whenever the governing body of any county or  
3 municipality to which there has been conveyed any real property,  
4 capital improvement, or personal property subject to such lawful  
5 conditions, restrictions or limitations shall by ordinance, in the  
6 case of a municipality, and by resolution, in the case of a county,  
7 determine that said real property, capital improvement or  
8 personal property can no longer be used advantageously for the  
9 purposes for which the same were acquired by the county or  
10 municipality, said county or municipality may, by ordinance or  
11 resolution, authorize the sale or exchange pursuant to section 13  
12 of this act of the interest of the county or municipality in said  
13 real property, capital improvement or personal property.

14 Whenever the county or municipality, by resolution or  
15 ordinance, as the case may be, determines that property, which  
16 has been acquired by purchase, gift, devise, lease, exchange or  
17 otherwise for a nominal or no consideration for a specific  
18 purpose, or subject to lawful conditions, restrictions or  
19 limitations as to its use, can no longer be used for the purposes  
20 for which acquired, it may offer or reconvey said property to the  
21 original grantor or his heirs for a similar or no consideration,  
22 prior to other disposition pursuant to section 13 of this act.<sup>2</sup>

23 (cf: P.L.1971, c.199, s.5)

24 <sup>2</sup>[17. N.J.S.40A:2-2 is amended as follows:

25 40A:2-2. The following words as used in this chapter shall have  
26 the following meanings, unless the context clearly indicates a  
27 different meaning:

28 "bond ordinance" means an ordinance adopted as herein  
29 provided by the governing body of a local unit authorizing  
30 obligations;

31 "bonds" means bonds or installment purchase agreements of a  
32 local unit;

33 "equalized valuation basis" of a local unit means the average  
34 for the last 3 preceding years, of the sum total of

35 a. the aggregate equalized valuation of real property together  
36 with improvements, as certified in the Table of Equalized  
37 Valuations by the Director of the Division of Taxation in the  
38 Department of the Treasury, on October 1 of each year, pursuant  
39 to chapter 86 of the laws of 1954, and

40 b. the assessed valuation of Class II railroad property as set  
41 forth in the table of equalized valuations referred to in "a" above.

42 "governing body" means the board of chosen freeholders of a  
43 county, or the commission, council, board or body having control  
44 of the finances of a municipality;

45 "local improvement" means an improvement or property, part  
46 or all of the cost of which has been, or is to be specially assessed  
47 on property;

48 "obligations" means bonds or notes of a local unit;

49 "refunding bond ordinance" means an ordinance adopted by the  
50 governing body of the local unit authorizing refunding bonds.<sup>1</sup>

51 (cf: P.L.1964, c.72, s.1)]<sup>2</sup>

52 <sup>2</sup>[18. N.J.S.40A:2-11 is amended to read as follows:

53 40A:2-11. a. No bond ordinance shall be finally adopted unless it  
54 appropriates to the purpose, or ratably to the respective purposes

1 to be financed, in addition to the obligations thereby authorized,  
2 a sum as a down payment which is not less than 5% of the amount  
3 of the obligations authorized.

4 b. Said sum so appropriated as a down payment must have been  
5 made available prior to final adoption of the bond ordinance from  
6 any 1 or more of the following:

7 1. by provision in a previously adopted budget or budgets of  
8 the local unit for down payment or for capital improvement  
9 purposes;

10 2. from moneys then actually held by the local unit and  
11 previously contributed for such purpose other than by the local  
12 unit; or

13 3. by emergency appropriation.

14 c. The provisions of this section shall not apply to a bond  
15 ordinance which authorizes obligations solely for the purpose of  
16 financing the acquisition of land or development easements on  
17 land by installment purchase agreements pursuant to the  
18 provisions of P.L. c. (C. )(now before the Legislature as this  
19 bill) and in accordance with the provisions of the "Local Lands  
20 and Building Law," P.L.1971, c.199 (C.40A-12-1 et seq.), any  
21 purpose referred to in paragraphs a, b, c, d, e and h of section  
22 40A:2-7.<sup>1</sup>

23 (cf: P.L.1960, c.169, s.1)]<sup>2</sup>

24 <sup>2</sup>[19.] 6.<sup>2</sup> Section 25 of P.L.1983, c.32 (C.4:1C-32) is amended  
25 to read as follows:

26 25. a. No development easement purchased pursuant to the  
27 provisions of this act shall be sold, given, transferred or  
28 otherwise conveyed in any manner except in those cases when  
29 development easements have been purchased on land included in a  
30 farmland preservation program included in a sending zone  
31 established by a municipal development transfer ordinance  
32 adopted pursuant to P.L.1989, c.86 (C.40:55D-113 et seq.).

33 b. Upon the purchase of the development easement by the  
34 board, the landowner shall cause a statement containing the  
35 conditions of the conveyance and the terms of the restrictions on  
36 the use and development of the land to be attached to and  
37 recorded with the deed of the land, in the same manner as the  
38 deed was originally recorded. These restrictions and conditions  
39 shall state that any development for nonagricultural purposes is  
40 expressly prohibited, shall run with the land and shall be binding  
41 upon the landowner and every successor in interest thereto.

42 c. At the time of settlement of the purchase of a development  
43 easement, the landowner and the board may agree upon and  
44 establish a schedule of payment which provides that the  
45 landowner may receive consideration for the easement in a lump  
46 sum, or in installments over a period of up to <sup>1</sup>[10] 40 years from  
47 the date of settlement, provided that:

48 (1) If a schedule of installments is agreed upon, the State  
49 Comptroller shall retain in the fund , or the governing body shall  
50 retain, an amount of money sufficient to pay the landowner  
51 pursuant to the schedule;

52 (2) The landowner shall receive annually interest on any unpaid  
53 balance remaining after the date of settlement. The interest  
54 shall accrue at a rate established in the installment contract.<sup>1</sup>

55 (cf: P.L.1989, c.86, s.16)

1       <sup>1</sup>[5.] <sup>2</sup>[10.1] 7.<sup>2</sup> (New section) The county agriculture  
2 development board of a county in which the voters of the county  
3 have approved, in a general or special election, a proposition  
4 authorizing the acquisition of lands for conservation as open  
5 space <sup>1</sup>[and/or] or<sup>1</sup> as farmland pursuant to P.L.1989, c.30  
6 (C.40:12-16 et seq.) shall, pursuant to the provisions of section 24  
7 of P.L.1983, c.32 (C.4:1C-31), adopt a prioritized list of farmland  
8 eligible for acquisition of development easements thereon by  
9 installment purchase agreements pursuant to the provisions of  
10 P.L. , c. (C. ) (now before the Legislature as this bill) if the  
11 county intends to acquire development easements on farmland in  
12 that manner. The governing body of the county shall annually  
13 appropriate from the county open space and farmland  
14 preservation trust fund such amounts as it may deem necessary to  
15 finance the acquisition of development easements on farmland  
16 within that county by installment purchase agreement.

17       <sup>1</sup>[6.] <sup>2</sup>[11.1] 8.<sup>2</sup> This act shall take effect immediately and  
18 shall retrospectively apply to any county whose voters have  
19 approved a proposition to acquire open space or farmland prior to  
20 the effective date of this act.

21  
22  
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25       \_\_\_\_\_

26 Authorizes county acquisition of farmland by installment  
purchase agreements.

ASSEMBLY, No. 341  
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblywoman OGDEN and Assemblyman LANCE

1 AN ACT concerning farmland preservation, authorizing the  
2 acquisition by installment purchase agreement of development  
3 easements by counties under certain circumstances, amending  
4 P.L.1971, c.199, P.L.1989, c.30, and amending the title thereof,  
5 N.J.S.40A:2-1 et seq., and supplementing chapter 12 of Title 40  
6 and chapter 1C of Title 4 of the Revised Statutes.

7

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

10 1. Section 7 through 10 of this act shall be known and may be  
11 cited as the "The Farmland Preservation Installment Purchase  
12 Act."

13 2. The title of P.L.1989, c.30 is amended to read as follows:

14 AN ACT concerning open space and farmland preservation by  
15 certain counties, and supplementing Title 40 of the Revised  
16 Statutes.

17 (cf: P.L.1989, c.30)

18 3. Section 1 of P.L.1989, c.30 (C.40:12-16) is amended to read  
19 as follows:

20 1. The governing body of any county in which the voters of the  
21 county have approved, in a general or special election, a  
22 proposition authorizing the acquisition of lands for conservation  
23 as open space or the acquisition of development easements on  
24 farmland by installment purchase agreement, may annually raise  
25 by taxation, including for purpose of debt service payments on  
26 indebtedness issued for the acquisition of open space or the  
27 acquisition of development easements on farmland by installment  
28 purchase agreement, a sum not to exceed the amount or rate set  
29 forth in the proposition approved by the voters, for the  
30 acquisition of land or water areas, and any existing improvements  
31 thereon, within the county for conservation as open space or  
32 farmland. Amounts raised by taxation [hereunder] for the  
33 acquisition of lands for conservation and open space shall be  
34 deposited in a county open space preservation trust fund and shall  
35 be used exclusively for the acquisition of open space areas.  
36 Selection of open space areas for acquisition shall be in  
37 accordance with a park, recreational and open space plan  
38 prepared and adopted by the county.

39 Amounts raised by taxation for the acquisition of farmland  
40 shall be deposited in the county farmland preservation trust fund  
41 established pursuant to section 8 of P.L.1991, c. (C. ) (now  
42 before the Legislature as this bill), and shall be used exclusively

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 by the governing body of the county for the acquisition of  
2 development easements on farmland.

3 The tax assessed, imposed and collected hereunder for the  
4 acquisition of development easements on farmland shall be  
5 referred to as the county farmland preservation tax.

6 Whenever the county shall determine that it is necessary that  
7 any public utility facilities such as tracks, pipes, mains, conduits,  
8 cables, wires, towers, poles and other equipment and appliances  
9 of any public utility, as defined in R.S.48:2-13, which are now, or  
10 hereafter may be, located in, on, along, over or under any open  
11 space area acquired by the county, should be removed from such  
12 area, the public utility owning or operating such facilities shall  
13 relocate or remove the same in accordance with the open space  
14 plan prepared and adopted by the county; except that the cost  
15 and expenses of such relocation or removal, including the cost of  
16 installing such facilities in a new location or new locations, and  
17 the cost of any lands, or any rights or interests in lands, and any  
18 other rights acquired to accomplish such relocation or removal,  
19 less the cost of any lands or any rights of the public utility paid  
20 to the public utility in connection with the relocation or removal  
21 of such property, shall be ascertained and paid by the county as a  
22 part of the cost of the acquisition. In case of any such relocation  
23 or removal of facilities, as aforesaid, the public utility owning or  
24 operating the same, its successors or assigns, may maintain and  
25 operate such facilities, with the necessary appurtenances, in the  
26 new location, for as long a period, and upon the same terms and  
27 conditions, as it had the right to maintain and operate such  
28 facilities in their former location.

29 As used in this act:

30 "Acquisition" means the securing of a fee simple absolute or a  
31 lesser interest in land or water areas, including development  
32 easements, by gift, purchase, devise or condemnation.

33 "Development easement" means an interest in farmland, less  
34 than fee simple absolute title thereto, which restricts the owner  
35 from developing the farmland for any non-agricultural purpose as  
36 defined pursuant to subsection f. of section 3 of the "Agriculture  
37 Retention and Development Act, P.L.1983, c.32 (C.4:1C-13), and  
38 shall include a statement containing the conditions of the  
39 conveyance of the easement and the terms of the restrictions on  
40 development which shall be recorded with the deed in the same  
41 manner as originally recorded.

42 "Farmland" means land deemed to be in agricultural use as  
43 defined pursuant to subsection a. of section 3 of the "Agriculture  
44 Retention and Development Act, P.L.1983, c.32 (C.4:1C-13).

45 "Open space" means land or water areas to be retained in a  
46 largely natural or undeveloped state, for purposes of, among  
47 other things, providing parkland or green spaces, protecting  
48 ecologically sensitive areas, preserving flora and wildlife, or  
49 protecting or preserving areas of scenic, historic and cultural  
50 value, while at the same time affording, whenever practicable,  
51 public outdoor recreational opportunities for the county's  
52 residents. "Open space" may include a recreational area such as  
53 a golf course if the acquisition subserves the objective of this act  
54 of protecting a largely undeveloped area from future

1 development.

2 (cf: P.L.1989, c.30, s.1)

3 4. Section 2 of P.L.1971, c.199 (C.40A:12-2) is amended to  
4 read as follows:

5 2. The following words shall have the following meanings,  
6 unless the context clearly indicates the contrary:

7 (a) "Acquire" shall include acquisition by gift, devise,  
8 purchase, exchange, grant, lease or condemnation, or a lesser  
9 interest in land or water areas, including the acquisition by  
10 installment purchase agreement of development easements on  
11 farmland, unless otherwise indicated.

12 (b) "Buildings" shall include any building or buildings and any  
13 structures, improvements, ingress or egress, grounds or plazas,  
14 necessary and incidental to the purpose of the building and the  
15 safety, comfort and well-being of its occupants.

16 (c) "Capital improvements" shall include, in addition to  
17 buildings, any structures, fixtures, edifices, byways, parking lots,  
18 service facilities, and any other facility necessary and incidental  
19 to the lawful performance of any function of a county or  
20 municipality.

21 (d) "County" means any county of this State of whatever class.

22 (e) "Municipality" means any town, township, borough, village  
23 or city of whatever class heretofore or hereafter created under  
24 general or special charter.

25 (f) "Personal property" shall mean any personal property  
26 necessary and incidental to the furnishing, refurbishing or  
27 refurbishing of a building.

28 (g) "Real property" shall include, in addition to the usual  
29 connotations thereof, any right, interest or estate in the area  
30 extending above any real property, or capital improvement  
31 thereon, to such a height or altitude as any title, interest or  
32 estate in real property may extend, commonly known as "air  
33 rights."

34 (h) "Resolution" or "ordinance" when used in connection with  
35 the action of a county or municipality means a resolution or  
36 ordinance adopted by the governing body of the county or  
37 municipality. In any case in which a resolution or ordinance  
38 authorizing the expenditure of public moneys is required to be  
39 approved by any other board, body or commission of the State,  
40 county or municipality, "resolution" or "ordinance" shall mean  
41 also adopted or approved by the board, body or commission  
42 authorized to take such action on behalf of the State, county or  
43 municipality.

44 (i) "Sale" shall include the conveyance of any estate, interest,  
45 easement or title to, or the waiver, release, or modification of  
46 any conditions, restrictions or limitations on any real property,  
47 capital improvement or personal property of the county or  
48 municipality, but shall not include any lease or exchange of such  
49 property.

50 (cf: P.L.1971, c.199, s.2)

51 5. N.J.S.40A:2-22 is amended to read as follows:

52 40A:2-22. The governing body of the local unit shall determine  
53 the period of usefulness of any purpose according to its  
54 reasonable life computed from the date of the bonds, which

- 1 period shall not be greater than the following:
- 2 a. Buildings and structures.
- 3 1. Bridges, including retaining walls and approaches, or
- 4 permanent structures of brick, stone, concrete or metal, or
- 5 similar durable construction, 30 years.
- 6 2. Buildings, including the original furnishings and equipment
- 7 therefor:
- 8 Class A: A building, of which all walls, floors, partitions, stairs
- 9 and roof are wholly of incombustible material, except the window
- 10 frames, doors, top flooring and wooden handrails on the stairs, 40
- 11 years;
- 12 Class B: A building, the outer walls of which are wholly of
- 13 incombustible material, except the window frames and doors, 30
- 14 years;
- 15 Class C: A building which does not meet the requirements of
- 16 Class A or Class B, 20 years.
- 17 3. Buildings or structures acquired substantially reconstructed
- 18 or additions thereto, one-half the period fixed in this subsection
- 19 for such buildings or structures.
- 20 4. Additional furnishings, five years.
- 21 b. Marine improvements.
- 22 1. Harbor improvements, docks or marine terminals, 40 years.
- 23 2. Dikes, bulkheads, jetties or similar devices of stone,
- 24 concrete or metal, 15 years; of wood or partly of wood, 10 years.
- 25 c. Additional equipment and machinery.
- 26 1. Additional or replacement equipment and machinery, 15
- 27 years.
- 28 2. Voting machines, 15 years.
- 29 d. Real property.
- 30 1. Acquisition for any public purpose of lands or riparian
- 31 rights, or both, and the original dredging, grading, draining or
- 32 planting thereof, 40 years.
- 33 2. Improvement of airport, cemetery, golf course, park,
- 34 playground, 15 years.
- 35 3. Stadia of concrete or other incombustible materials, 20
- 36 years.
- 37 e. Streets or thoroughfares.
- 38 1. Elimination of grade crossings, 35 years.
- 39 2. Streets or roads:
- 40 Class A: Rigid pavement. A pavement of not less than eight
- 41 inches of cement concrete or a six-inch cement concrete base
- 42 with not less than three-inch bituminous concrete surface course,
- 43 or equivalent wearing surface, 20 years.
- 44 Flexible pavement. A pavement not less than 10 inches in
- 45 depth consisting of five-inch macadam base, three-inch modified
- 46 penetration macadam and three-inch bituminous concrete surface
- 47 course or other pavements of equivalent strength, in accordance
- 48 with the findings of the American Association of State Highway
- 49 Officials (AASHO) Road Test, 20 years.
- 50 Class B: Mixed surface-treated road. An eight-inch surface of
- 51 gravel, stone or other selected material under partial control
- 52 mixed with cement or lime and fly ash, six inches in compacted
- 53 thickness with bituminous surface treatment and cover, 10 years.
- 54 Bituminous penetration road. A five-inch gravel or stone base

1 course and a three-inch course bound with a bituminous or  
2 equivalent binder, 10 years. Class C: Mixed bituminous road.  
3 An eight-inch surface of gravel, stone, or other selected material  
4 under partial control mixed with bituminous material one inch or  
5 more in compacted thickness, five years.

6 Penetration macadam road. A road of sand, gravel or  
7 water-bound macadam, or surfacing with penetration macadam,  
8 five years.

9 3. Sidewalks, curbs and gutters of stone, concrete or brick, 10  
10 years.

11 The period of usefulness in this subsection shall apply to  
12 construction and reconstruction of streets and thoroughfares.

13 f. Utilities and municipal systems.

14 1. Sewerage system, whether sanitary or storm water, water  
15 supply or distribution system, 40 years.

16 2. Electric light, power or gas systems, garbage, refuse or  
17 ashes incinerator or disposal plant, 25 years.

18 3. Communication and signal systems, 10 years.

19 4. House connections to publicly-owned gas, water or  
20 sewerage systems from the service main in the street to the curb  
21 or property lines where not part of original installation, five  
22 years.

23 g. Vehicles and apparatus.

24 1. Fire engines, apparatus and equipment, when purchased  
25 new, but not fire equipment purchased separately, 10 years.

26 2. Automotive vehicles, including original apparatus and  
27 equipment (other than passenger cars and stationwagons), when  
28 purchased new, five years.

29 3. Major repairs, reconditioning or overhaul of fire engines and  
30 apparatus, which may reasonably be expected to extend for at  
31 least five years the period of usefulness thereof, five years.

32 h. The closure of a sanitary landfill facility utilized, owned or  
33 operated by a county or municipality, 15 years; provided that the  
34 closure has been approved by the Board of Public Utilities and the  
35 Department of Environmental Protection. For the purposes of  
36 this subsection "closure" means all activities associated with the  
37 design, purchase or construction of all measures required by the  
38 Department of Environmental Protection, pursuant to law, in  
39 order to prevent, minimize or monitor pollution or health hazards  
40 resulting from sanitary landfill facilities subsequent to the  
41 termination of operations at any portion thereof, including, but  
42 not necessarily limited to, the costs of the placement of earthen  
43 or vegetative cover, and the installation of methane gas vents or  
44 monitors and leachate monitoring wells or collection systems at  
45 the site of any sanitary landfill facility.

46 i. A development easement on farmland acquired by the  
47 governing body of a county by installment purchase agreement  
48 pursuant to the provisions of P.L.1989, c.30 (C.40:12-16 et seq.),  
49 and in accordance with the provisions of the "Local Lands and  
50 Building Law," P.L.1971, c.199 (C.40A:12-1 et seq.), 30 years.

51 [i.] j. Any purpose, except vehicles, not included in the  
52 foregoing, for which obligations may be issued, 15 years.

53 (cf: P.L.1985, c.153, s.2)

54 6. N.J.S.40A:2-27 is amended to read as follows:



1 40A:2-27. All bonds shall be sold at public sale upon sealed  
2 proposals, except that bonds may be sold at private sale:

3 a. Without any previous public offering

4 (1) if constituting all or part of an authorized issue of  
5 \$100,000.00 or less, or

6 (2) if sold to any board, body, agency, commission,  
7 instrumentality, district, authority or political subdivision of any  
8 local unit, or of the State, or of the Federal Government; [or]

9 b. If no legally acceptable bid is received at advertised public  
10 offering, such bonds or any of them may be sold within 30 days  
11 after the advertised date for public bidding, provided, however,  
12 that no bonds shall bear interest at any rate of interest which is  
13 higher than the rate or maximum rate specified in the notice of  
14 sale, nor contain substantially different provisions from those  
15 specified in said notice; or

16 c. If the obligations to be sold are for the purpose of financing  
17 the acquisition of development easements on farmland by  
18 installment purchase agreement by the governing body of a  
19 county pursuant to the provisions of P.L.1989, c.30 (C.40:12-16 et  
20 seq.), and in accordance with the provisions of the "Local Lands  
21 and Building Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

22 Any purchaser of bonds at private sale, other than a public  
23 body, shall deposit a certified or cashier's or treasurer's check  
24 drawn upon a bank or trust company in an amount equal to 5% of  
25 the amount of bonds purchased and such amount shall be applied  
26 as in the case of a deposit made at public sale.

27 Any private sale of bonds shall be made or confirmed by  
28 resolution of the governing body adopted by not less than a 2/3  
29 vote of the full membership thereof, setting forth the date,  
30 maturities, interest rate and price of the bonds and the name of  
31 the purchaser.

32 (cf: P.L.1981, c.111, s.1)

33 7. (New section) Amounts raised by taxation for the  
34 acquisition of development easements on farmland pursuant to  
35 P.L.1989, c.30 (C.40:12-16 et seq.), and in accordance with the  
36 provisions of the Local Lands and Buildings Law," P.L.1971, c.199  
37 (C.40A:12-1 et seq.) and the Local Bond Law, N.J.S.40A:2-1 et  
38 seq., shall be apportioned by the county board of taxation among  
39 the municipalities of the county in accordance with the provisions  
40 of R.S.54:4-49. Amounts so apportioned shall be assessed, levied  
41 and collected in the same manner and at the same time as other  
42 county taxes.

43 8. (New section) Amounts raised by taxation for the  
44 acquisition of farmland pursuant to P.L.1989, c.30, (C.40:12-16 et  
45 seq.) and acquired in accordance with the provisions of the Local  
46 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.)  
47 and the Local Bond Law, N.J.S.40A:2-1 et seq., shall be deposited  
48 in a trust fund to known as the county farmland preservation  
49 trust fund. The governing body of a county shall deposit all  
50 monies collected by the county farmland preservation tax into  
51 the fund for the purpose of financing the acquisition of  
52 development easements on farmland located within that county  
53 by the governing body.

1 9. (New section) The governing body of a county shall annually  
 2 appropriate such amounts as it may deem necessary to finance  
 3 the acquisition by installment purchase agreement of  
 4 development easements on farmland within that county from the  
 5 county farmland preservation trust fund.

6 10. (New section) The county agriculture development board  
 7 of a county in which the voters of the county have approved, in a  
 8 general or special election, a proposition authorizing the  
 9 acquisition by installment purchase agreement of development  
 10 easements on farmland, shall, pursuant to the provisions of the  
 11 "Agriculture Retention and Development Act," P.L.1983, c.32  
 12 (C.4:1C-11 et seq.) adopt a prioritized list of farmland eligible  
 13 for acquisition of development easements pursuant to the  
 14 provisions of P.L.1991, c. (C. ) (now before the Legislature as  
 15 this bill).

16 11. This act shall take effect immediately and shall  
 17 retrospectively apply to any county whose voters have approved a  
 18 proposition to acquire an development easement on farmland  
 19 within two years of the effective date of this act.  
 20

#### 21 STATEMENT

22 This bill amends the "Local Lands and Building Law," P.L.1971,  
 23 c.199 (C.40A:12-1 et seq.), the Local Bond Law, N.J.S.40A:2-1 et  
 24 seq., P.L.1989, c.30, and supplements Title 4 and Title 40 of the  
 25 Revised Statutes, to provide a statutory framework for the  
 26 institution of securitizable tax-exempt farmland installment  
 27 purchase financing programs by the governing bodies of the  
 28 counties of this State, subsequent to approval by the electorate.  
 29 This approach to farmland preservation has been utilized with  
 30 apparent success in Howard County, Maryland, and this bill  
 31 would: (1) remove certain restrictions in the statutory law that  
 32 would militate against its implementation in New Jersey; and (2)  
 33 provide a role for the general public in approving the levying of  
 34 county taxes in order to finance such a program.  
 35

36 Under a securitizable tax-exempt farmland installment  
 37 purchase financing program (the program), a county would enter  
 38 into an agreement with a landowner to buy an development  
 39 easement on that farm in perpetuity. The agreement would be  
 40 structured into two separate payment components: (1)  
 41 semi-annual interest payments to the farmer for a period of 30  
 42 years, and then at the end of that period, (2) to purchase of the  
 43 easement for a specified balloon principal payment. The interest  
 44 rate of the semi-annual payments would be subject to  
 45 negotiation, and according to the proponents of this approach,  
 46 such interest would be exempt from federal, State and local  
 47 income taxes.  
 48

49 In order to fulfill the first component of the payment for the  
 50 easement, counties would be authorized to raise revenues by  
 51 taxation to make the semi-annual interest payments, and to  
 52 provide for the principal payments due in 30 years by investing in  
 53 zero-coupon U.S. Treasury obligations. These obligations are sold  
 54 at a steep discounts (approximately 8 cents on the dollar) from  
 55 the face values to which they will accrete over their maturities

1 at imputed interest rates. Proponents of this program have  
2 stated that the interest rate on the semi-annual interest  
3 payments must equal or exceed the imputed rate of interest on  
4 the zero-coupon obligations. Such rates are often better than  
5 other tax-exempt obligations, and, provided that the county does  
6 not realize a profit on the interest charged, and is not artificially  
7 inflating the rate, it would avoid the arbitrage problems created  
8 by an "invested sinking fund."

9 Under the program, landowners of farmland would apparently  
10 realize a number of benefits: (1) deferral of capital gains for 30  
11 years, or until the agreements made pursuant to the program pass  
12 to their estates, or until capital gains taxes decline and they  
13 liquidate their agreements; (2) the aforementioned semi-annual  
14 tax-exempt interest payments; (3) better estate planning by  
15 placing the agreements into marital trusts, or by deferring  
16 recognition of capital gains indefinitely and allowing for the  
17 agreements to pass to their estates, where their bases may be  
18 increased by federal estate taxes such that any capital gains  
19 taxes are eliminated, or by separating the development easement  
20 from the farmland, and making the agreements securitizable; and  
21 (4) participating landowners could realize deductions under  
22 section 170(h) of the Internal Revenue Code of 1986 that are  
23 equal to the difference between the appraised value of  
24 development easements and the prices the county of authority  
25 pay for such easements.

26 The advantage for counties under such a program would be the  
27 use of monies that would accrete to a certain value over 30  
28 years, to purchase valuable farmland today, while it is still  
29 available. Payment of interest over 30 years would allow the  
30 citizens to pay the costs of preserving farmland over the period  
31 of time when they enjoy the benefits of its protection from  
32 development. Proponents of such a program also assert that  
33 landowners will be willing to sell development easements on their  
34 land at lower prices than fee simple absolute acquisitions, in  
35 order to take advantage of the tax benefits offered by the  
36 program.

37 Another component of the program is the structuring of the  
38 agreements entered into by counties and landowners which would  
39 allow such agreements to be securitized at the landowners  
40 option. Under such an agreement, brokerage firms would obtain  
41 sufficient cash to purchase the landowner's agreement, and thus  
42 allow the landowner to liquidate his interest in the installment  
43 program. The firms would raise the cash through the sale of  
44 certificates of participation, which are a type of security that  
45 actively traded throughout the United States and are rated by  
46 major credit rating services.

47 In order to provide for the establishment of this type of  
48 program by a governing body of a county, this bill amends  
49 P.L.1989, c.30 to allow the governing body of any county in which  
50 the voters of the county have approved, in a general or special  
51 election, a proposition authorizing the acquisition of development  
52 easements on farmland. Amounts raised by taxation for the  
53 acquisition of farmland would be deposited in the county  
54 farmland preservation trust fund established and administered

1 pursuant to sections 7 through 10 inclusive of the bill.

2 In order to allow such purchases by the governing body of a  
3 county, the bill also amends the "Local Lands and Buildings Law,"  
4 P.L.1971, c.199 (C.40A:12-1 et seq.) to include the acquisition of  
5 farmland under the authority granted by that act.

6 The bill also amends the Local Bond Law, N.J.S.40A:2-1 et  
7 seq., to allow counties to enter into lease purchase agreements  
8 for development easements for a period of time not to exceed 30  
9 years, and removes the sale of these agreements from the  
10 competitive sale provisions of N.J.S.40A:2-27.

11 Finally, the bill empowers the county agriculture development  
12 boards, created pursuant to the provisions of the "Agriculture  
13 Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et  
14 seq.), to adopt eligibility criteria for farmland whose easements  
15 are to be acquired pursuant to this act.

16

17

18

19

20 "The Farmland Preservation Installment Purchase Act."

ASSEMBLY ENVIRONMENT COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 341**  
**STATE OF NEW JERSEY**

DATED: JUNE 8, 1992

The Assembly Environment Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 341.

The committee substitute provides a statutory framework for the institution of a securitizable tax-exempt farmland installment purchase financing program by a county governing body, subsequent to approval by the electorate of that county. This approach to farmland preservation has been utilized with apparent success in Howard County, Maryland, and this bill would (1) remove certain provisions or restrictions in the statutory law that would inhibit its implementation in New Jersey, and (2) provide a role for the general public in approving the levying of county taxes in order to finance such a program.

Under a securitizable tax-exempt farmland installment purchase financing program (the program), a county would enter into an agreement with a landowner to buy a development easement on that farm in perpetuity. The agreement would be structured into two separate payment components: (1) semi-annual interest payments to the farmer for a period of 30 years, and (2) at the end of that period, the purchase of the development easement with a specified balloon principal payment. The interest rate of the semi-annual payments would be subject to negotiation, and according to the proponents of this approach, such interest would be exempt from federal, State, and local income taxes.

Counties would be authorized to raise revenue by taxation to be utilized for installment purchase agreements. This revenue could be utilized by a county to make the semi-annual interest payments, and to provide for the principal payments due in 30 years by investing in zero-coupon U.S. Treasury obligations. These obligations are sold at steep discounts (approximately 8 cents on the dollar) from the face values to which they will accrete over their maturities at imputed interest rates. Proponents of this program have stated that the interest rate on the semi-annual interest payments must equal or exceed the imputed rate of interest on the zero-coupon obligations. Such rates are often better than other tax-exempt obligations, and, provided that the county does not realize a profit on the interest charged, and is not artificially inflating the rate, any potential arbitrage problems created by an "invested sinking fund" would be avoided.

Under the program, landowners of farmland would apparently realize a number of benefits: (1) deferral of capital gains for 30 years, or until the agreements made pursuant to the program pass to their estates, or until capital gains taxes decline and they liquidate their agreements; (2) the aforementioned semi-annual tax-exempt interest payments; (3) better estate planning by placing

the agreements into marital trusts, or by deferring recognition of capital gains indefinitely and allowing for the agreements to pass to their estates, where their bases may be increased by federal estate taxes such that any capital gains taxes are eliminated, or by separating the development easement from the farmland, and making the agreements securitizable; and (4) possible realization of deductions under section 170(h) of the Internal Revenue Code of 1986 that are equal to the difference between the appraised value of development easements and the prices the county pays for such easements.

The advantage for counties under such a program would be obtaining the use of monies, which would accrete to a certain value over 30 years, to purchase valuable farmland today while it is still available. Payment of interest over 30 years would allow the citizens to pay the costs of preserving farmland over the period of time when they enjoy the benefits of its protection from development. Proponents of such a program also assert that landowners will be willing to sell development easements on their land at lower prices than fee simple absolute acquisitions, in order to take advantage of the tax benefits offered by the program.

Another component of the program is the structuring of the agreements entered into by counties and landowners in a manner that would allow such agreements to be securitized at the landowner's option. Under such an agreement, brokerage firms would obtain sufficient cash to purchase the landowner's agreement, and thus allow the landowner to liquidate his interest in the installment program. The firms would raise the cash through the sale of certificates of participation in the installment purchase agreement.

In order to provide for the establishment of this type of program by a governing body of a county, this bill amends P.L.1989, c.30 (C.40:12-16 et seq.) to allow 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 and/or as farmland to utilize that revenue for the acquisition of farmland by installment purchase agreements.

In order to allow such purchases by the governing body of a county, the bill also amends the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.) to include the acquisition of development easements on farmland utilizing installment purchase agreements.

The bill also amends the "Local Bond Law," N.J.S.40A:2-1 et seq., to allow counties to enter into installment purchase agreements for development easements on farmland for a period of time not to exceed 30 years, and to remove the sale of these agreements from the competitive sale provisions of N.J.S.40A:2-27.

Finally, the bill empowers the county agriculture development boards, created pursuant to the provisions of the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.), to adopt eligibility criteria for farmland for which development easements are to be acquired utilizing installment purchase agreements pursuant to the bill.

SENATE SENIOR CITIZENS, VETERANS AFFAIRS  
AND AGRICULTURE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 341**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: JULY 20, 1992

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This bill provides a statutory framework for the institution of a securitizable tax-exempt farmland installment purchase financing program by a county governing body, subsequent to approval by the electorate of that county. This approach to farmland preservation has been utilized with apparent success in Howard County, Maryland, and this bill would (1) remove certain provisions or restrictions in the statutory law that would inhibit its implementation in New Jersey, and (2) provide a role for the general public in approving the levying of county taxes in order to finance such a program.

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Under the program, landowners of farmland would apparently realize a number of benefits: (1) deferral of capital gains for 30 years, or until the agreements made pursuant to the program pass to their estates, or until capital gains taxes decline and they liquidate their agreements; (2) the aforesaid semi-annual tax-exempt interest payments; (3) better estate planning by placing the agreements into marital trusts, or by deferring recognition of capital gains indefinitely and allowing for the agreements to pass to their estates, where their bases may be increased by federal estate taxes such that any capital gains taxes are eliminated, or by separating the development easement from the farmland, and making the agreements securitizable; and (4) possible realization of deductions under section 170(h) of the Internal Revenue Code of 1986 that are equal to the difference between the appraised value of development easements and the prices the county pays for such easements.

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The Committee amended the bill to: assign development rights a useful life of 40 years, rather than 30 years, to make the period consistent with useful life of riparian rights; eliminate the requirement of a good faith deposit in the case of installment purchase agreements, to include a definition of "bonds" in the "Local Bond Law"; and to replace the archaic term "and/or" with the term "or".



**GIVE COUNTIES THE OPTION TO RAISE FUNDS FOR FARMLAND PRESERVATION VIA REFERENDUM AND ALLOW MUNICIPALITIES TO RAISE FUNDS IN THE SAME MANNER FOR OPEN SPACE AND FARMLAND PRESERVATION.**

P.L. 1989, C.30 permitted counties to raise funds for open space preservation through referendum. The Monmouth County Improvement Authority, following a non-binding referendum placed before the voters of the county in 1988, and subsequent action by the Board of Chosen Freeholders taken pursuant to P.L. 1989, c.30, has been engaged in the issuance of revenue bonds using monies derived from a dedicated portion of the county property tax levy for the purpose of fee simple acquisitions of open space. The statute should be amended to permit counties to raise monies for farmland preservation as well as open space.

Municipalities would benefit from having the same opportunity to raise funds as provided to counties in the above-referenced statute.

Towns may wish to consider dedicating a portion of property taxes or possibly a realty transfer fee for this purpose. The rationale behind utilizing these revenue sources is that open space preservation will enhance property values, therefore a small but wise investment on the part of property owners.

Local governments should provide a separate line item on tax bills which indicates the portion allocated to open space and farmland presentation.



**AUTHORIZE/ENCOURAGE COUNTIES TO ESTABLISH INSTALLMENT PURCHASE PROGRAMS.**

Having undergone intense development pressure, Maryland's Howard County initiated an Agricultural Land Preservation Program in 1978 in order to buy development rights on farmland with a goal of preserving at least 20,000 acres. After a successful start, the program stalled in 1987 because even with \$9 million accumulated, the County could not afford to compete with developers. In response, they developed an installment purchase financing program. The program is structured to buy easements by using an installment purchase agreement which pays interest semi-annually, with the bulk of the principal paid at the end of 30 years. Farmers receive unique financial and tax advantages which enable Howard County to successfully compete with developers. The County is also able to use accumulated and future dedicated revenue to preserve farmland while the land is still undeveloped; the \$9 million plus revenues anticipated from a dedicated source will enable the County to spend up to \$50 million now while farmland is still available (and less expensive than it will likely be in the future).

Since May 1989, when the installment financing program was announced, easements on 1,000 acres were acquired and an additional 1,100 acres have been committed to the preservation program. During the previous 12 month period, only 55 acres were acquired and none were committed to the program ("Howard County Maryland: Agricultural Land Preservation Financing Program," May 1990).

Landowners entering into installment purchase agreements can benefit by receiving capital gains deferral, tax-exempt semi-annual interest payments, and federal income tax deductions if the easement was sold to the government at below market value. If installment purchase programs could be developed in New Jersey, perhaps for open space as well as farmland, limited dollars could be leveraged for much greater gain.



**REQUIRE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PREPARE AND DISSEMINATE TO MUNICIPAL PLANNING BOARDS, INFORMATION ON THE TOOLS AVAILABLE TO THEM TO PRESERVE OPEN SPACE AND FARMLAND.**

Local officials are not always aware of the array of tools available to them to preserve open space and farmland. The DEP should be required to prepare materials which synthesize for local officials the land preservation techniques permitted by law, methods available to raise funds for open space and farmland acquisition, and programs found successful in other jurisdictions in preserving open space. Local officials should also be provided with information on state-of-the-art zoning and subdivision, including model ordinances. Ideally, a training/certification program should be promoted, whereby municipalities are encouraged to require their planning board members to review the informational materials and/or participate in other related training, and certify that they have done so.



**AUTHORIZE AGREEMENTS BETWEEN MUNICIPALITIES AND CERTAIN NON-PROFIT ORGANIZATIONS FOR THE MAINTENANCE OF PARKS.**

Often, towns are reluctant to acquire open space because of the anticipated high cost of operation and maintenance. If towns could enter into agreements with neighborhood non-profit organizations for the maintenance of neighborhood parks or public recreational areas, they would likely be more inclined to acquire properties. There are numerous organizations throughout the State with the interest and resources to provide these services and thus relieve the municipality of some or all of its maintenance burden.