

40:56-41.2

LEGISLATIVE HISTORY CHECKLIST

NJSA 40:56-41.2 (Farmland - deferred assessment--prohibit charging interest for local improvements)

LAWS 1981 CHAPTER 310

Bill No. S1183

Sponsor(s) Dumont

Date Introduced April 17, 1980

Committee: Assembly Agriculture & Environment

Senate County & Municipal Govt., Natural Resources & Agriculture

Amended during passage Yes
according to Governor's recommendations:

~~NO~~ Amendments denoted by asterisks

Date of Passage: Assembly June 22, 1981

Re-enacted 11-30-81

Senate May 14, 1981

Re-enacted 11-23-81

Date of approval Dec. 3, 1981

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Case, referred to in veto message:

Arthur Apgar et al. vs Township of Branchburg,
(3-7-80)---unpublished opinion

6/22/81

Dumont
11-23-81

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1183

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1980

By Senator DUMONT

Referred to Committee on County and Municipal Government

AN ACT to amend "An act to defer payment of assessments levied for local improvements in certain cases," approved March 3, 1976 (P. L. 1975, c. 341).

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

1 1. Section 2 of P. L. 1975, c. 341 (C. 40:56-41.2) is amended to
2 read as follows:

3 2. ****a.**** When all or part of the cost of the installation of a local
4 improvement, as defined in R. S. 40:56-1 is assessed against the
5 lands benefited thereby, payment of bills for the amount of the
6 assessment levied, or for any installment thereof, with respect to
7 farmland or other open space shall be deferred, except as to the
8 extent of the immediate benefit of the local improvement, until
9 ****[approval of a subdivision plan as to such land]**** ****[or the**
10 **issuance of a building permit for a]** ****[*for* residential, commer-**
11 **cial or industrial]**** ****[structure as to a particular lot or parcel**
12 **thereof, whichever occurs first]** ****[*purposes is granted]****
13 ****the land is no longer actively devoted to agricultural or horti-**
14 **cultural use as defined by section 5 of the "Farmland Assessment**
15 **Act of 1964," P. L. 1964, c. 48 (C. 54:A-23.5)****. ****[Interest]****
16 ****b.** *With respect to local improvements authorized by the municipi-*
17 *ality on or after the date of enactment of this act, interest** shall*
18 *not be charged on any assessment so deferred, either during the*
19 *period of deferment or as accumulated interest at the termination*
20 *of the deferment. **With respect to local improvements authorized*
21 *by the municipality before the date of enactment of this act, interest*
22 *may be charged on any assessments so deferred, except where the*
23 *owner, or in the case of a corporate owner, the principal stock-*
24 *holder, makes his principal residence on the lands against which*
25 *the deferred assessment is charged, on adjacent land, or on other*

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

26 *farmland or other open space. Interest shall not exceed the rate*
27 *that may be charged on installments pursuant to R. S. 40:56-35 and*
28 *shall be due and payable upon the termination of the deferment.***

1 2. This act shall take effect immediately **and shall **with respect*
2 *to the charging of interest** be retroactive to March 3, 1976*.*

SENATE, No. 1183

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6 ment levied, or for any installment thereof, with respect to farm-
7 land or other open space shall be deferred, except as to the extent
8 of the immediate benefit of the local improvement, until approval
9 of a subdivision plan as to such land or the issuance of a building
10 permit for a residential, commercial or industrial structure as to a
11 particular lot or parcel thereof, whichever occurs first. *Interest*
12 *shall not be charged on any assessment so deferred, either during*
13 *the period of deferment or as accumulated interest at the termina-*
14 *tion of the deferment.*

1 2. This act shall take effect immediately.

STATEMENT

Questions have arisen concerning the 1975 law which defers payment of assessment or any installment thereof, against farmland for local improvements (P. L. 1975, c. 341, C. 40:56-41.1 et seq.). This law, at present, is silent on the questions of whether interest on such assessment may be charged and if so, when interest may be charged. As a result, local tax assessors have asserted their intention to begin charging interest to the farmland owner and collecting this interest during the period of deferment.

This bill would clarify and correct any reading of the law contrary to the legislative intent to preserve farmland by prohibiting the charging of interest on deferred assessments for local improvements to farmland, either during the period of deferment or as a lump sum at the termination of the deferment.

SENATE NATURAL RESOURCES AND AGRICULTURE
COMMITTEE

STATEMENT TO

SENATE, No. 1183

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1981

Questions have arisen concerning the 1975 law which defers payment of assessment or any installment thereof, against farmland for local improvements (P. L. 1975, c. 341, C. 40:56-41.1 et seq.). This law, at present, is silent on the questions of whether interest on such assessment may be charged and if so, when interest may be charged. As a result, local tax assessors have asserted their intention to begin charging interest to the farmland owner and collecting this interest during the period of deferment.

This bill would clarify and correct any reading of the law contrary to the legislative intent to preserve farmland by prohibiting the charging of interest on deferred assessments for local improvements to farmland, either during the period of deferment or as a lump sum at the termination of the deferment.

Since farmers routinely improve their farms by constructing various structures such as barns and silos, the issuance of a building permit might trigger the imposition of the deferred assessment even though the land has received no benefit from the local improvement. Thus the committee amended the bill so that that deferment would not be terminated until approval of a subdivision plan for residential, commercial or industrial purposes, thereby indicating a clear intention to change the use of the land.

The committee amended the effective date to preclude the charging of interest on such a deferment as of the effective date of the original act, P. L. 1975, c. 341 (C. 40:56-41.1).

SENATE BILL NO. 1183 (OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 1183 (OCR) with my objections for reconsideration.

This bill clarifies the intent of P.L. 1975, c. 341 which declared that an owner of land under farmland tax assessment need not pay assessments for local improvements that he did not use, until he subdivided his land or obtained a permit to build on his land. The bill states that a municipality may not charge interest on the deferred assessment. The Superior Court, in a case involving Branchburg Township, has ruled that interest must be accumulated and paid upon the termination of the deferral.

Charging interest upon the deferred assessment would in general defeat the purpose of P.L. 1975, c. 341. The law discourages municipalities from authorizing construction in farming areas of local improvements that enhance development and ultimately force out farming. If interest could be recouped, the municipality would not be discouraged from allowing the local improvement. Also, the law is intended to make it affordable for a farmer to continue to work his land, even after the improvement is built. For example, an assessment for sewers that a farmer does not use might be prohibitive for the farmer, but quite manageable if the land were developed and put to a more profitable use. If interest were allowed to accrue upon the deferred assessment, the debt might mount so high that it would impair the value of the land, forcing the farmer to sell out.

Nonetheless, charging interest would be justified in certain cases. P.L. 1975, c. 341 mandated the deferral of assessments in projects already authorized by municipalities but was silent on the question of interest. Some municipalities assumed that interest could be charged. If prohibited from charging interest, such municipalities will incur unforeseen costs that will have to be shared by other taxpayers. Indeed, in many cases deferred assessments benefit developers who enjoy farmland tax assessment by temporarily leasing their land to farmers. Although it is desirable to promote the continued farming of such lands, some of these same developers had originally encouraged the installation of the local improvement. If

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EXECUTIVE DEPARTMENT

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not charged interest, they will enjoy an undeserved windfall as they wait for an opportune time to build on their land. Consequently, with respect to local improvements approved by a municipality before the date of enactment of this bill, interest should be chargeable, except to landowners who reside on the affected farm. A residency exception should spare most family farmers from interest charges which, in fairness, should be borne by landowners who plan ultimately to develop their land and utilize the local improvements.

I note that the bill also changes when the deferral of the assessment will terminate. The law now provides that the deferral expires upon the issuance of a subdivision plan or a building permit for residential, commercial or industrial structures. The bill would remove the obtaining of a building permit as a trigger for ending the deferral. The apparent intent was to allow farmers to build another home on their land without losing the deferred assessment. However, the change in the law would provide a windfall, retroactive to 1976, to landowners who developed their land without securing subdivision plans. A more appropriate change in the law would be to terminate deferrals when the land is no longer actively put to agricultural or horticultural use. This would permit farmers to build farmhouses, barns or roadside fruit and vegetable stands without losing the deferral. Of course, the deferral would terminate upon the construction of an office building or warehouse and the cessation of farming.

Accordingly, I herewith return Senate Bill No. 1183 (OCR) for reconsideration and recommend that it be amended as follows:

Page 1, section 1, line 3: After "2." insert "a."

Page 1, section 1, line 8: Delete "approval" and insert "the land is no longer actively devoted to agricultural or horticultural use as defined by the Farmland Assessment Act of 1964, P.L. 1964, c. 48, sec. 5 (C.54:4-23.5)"

Page 1, section 1, lines 9 and 10: Delete balance of lines

Page 1, section 1, line 12: Delete "purposes is granted" and after "." insert "b. With respect to local improvements authorized by the municipality on or after the date of enactment of this bill, interest" and delete

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"Interest"

Page 1, section 1, line 14: After "deferment." add "With respect to local improvements authorized by the municipality before the date of enactment of this bill, interest may be charged on any assessments so deferred, except where the owner, or in the case of a corporate owner, the principal stockholder, makes his principal residence on the lands against which the deferred assessment is charged, on adjacent land, or on other farmland or other open space. Interest shall not exceed the rate that may be charged on installments pursuant to R.S. 40:56-35 and shall be due and payable upon the termination of the deferment."

Page 1, section 2, line 1: After "shall" insert "with respect to the charging of interest"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY