

4:1C-38 to 4:1C-43

**LEGISLATIVE HISTORY CHECKLIST**

**NJSA:** 4:1C-38 to 4:1C-43 (Farmland-- certain-- sale give State 30 day right of 1st refusal)

**LAWS OF:** 1989 **CHAPTER:** 28

**BILL NO:** A1211

**SPONSOR(S):** Ogden

**Date Introduced:** Pre-filed

**Committee:** **Assembly:** Conservation, Natural Resources and Energy

**Senate:** Natural Resources and Agriculture

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

**Date of Passage:** **Assembly:** February 18, 1988 Re-enacted 1-26-89

**Senate:** October 17, 1988 Re-enacted 2-9-89

**Date of Approval:** February 17, 1989

**Following statements are attached if available:**

**Sponsor statement:** Yes (Below)

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

**Senate** Yes

**Fiscal Note:** No

**Veto Message:** Yes

**Message on Signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** Yes

**Sponsor's statement:**

This bill allows the State the right of first refusal to purchase fee simple absolute title to certain farmlands prior to their sale.

(OVER)

Hearing on A3556 during prior Legislative session:

974.90 New Jersey. Legislature. Assembly. Economic Development and Agriculture  
A278 Committee.  
1987 Public hearing on A3556, A3557, held 2-5-87.  
Trenton, 1987.

See newspaper clippings attached:

"Kean legalizes 2 measures intended to protect open space," 2-18-89 Home news.

rdv

[FIRST REPRINT]  
ASSEMBLY, No. 1361

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblywoman OGDEN

1 AN ACT concerning agriculture and farmland development,  
2 amending P.L.1983, c.32 and supplementing chapter 1C of  
3 Title 4 of the Revised Statutes.

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

7 1. In addition to those powers and duties provided for by  
8 section 5 of P.L.1983, c.31 (C.4:1C-6) and by sections 5 and 6 of  
9 P.L.1983, c.32 (C.4:1C-5 and C.4:1C-7), the State Agriculture  
10 Development Committee also shall have the power to purchase  
11 and acquire, in the name of the State, fee simple absolute title  
12 to farmland in accordance with section 3 of this act.

13 2. a. A landowner who wishes to sell a fee simple absolute  
14 interest in land <sup>1</sup>that becomes<sup>1</sup> enrolled in a farmland  
15 preservation program or a municipally approved farmland  
16 preservation program <sup>1</sup>after this bill's effective date and<sup>1</sup>  
17 established pursuant to sections 13 and 14 of P.L.1983, c.32  
18 (C.4:1C-20 and C.4:1C-21), respectively, shall give to the  
19 committee no less than 60 days prior written notice, by  
20 certified mail, of the terms and conditions of the proposed  
21 sale. A copy of the proposed offer indicating the price which  
22 the proposed purchaser has agreed to pay for the land shall be  
23 attached to the notice of proposed sale. The notice of proposed  
24 sale shall also include any other information which the  
25 committee may reasonably require by regulation. The  
26 committee shall have the first right and option to purchase the  
27 land upon substantially similar terms and conditions, which right  
28 and option shall be exercisable as provided by this section. If  
29 the committee chooses to exercise the first right and option, the  
30 committee shall give notice of such intent to the landowner  
31 within a period of 30 days following the date of receipt of the

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> Assembly floor amendments adopted in accordance with Governor's  
recommendations December 15, 1988.

1 notice of proposed sale. The committee shall submit its offer to  
2 match the terms and conditions of the proposed sale to the  
3 landowner within the 60 days following the expiration of the  
4 30-day period. If no notice is given within the 30-day period  
5 that the committee intends to exercise the first right and  
6 option, the owner may at the expiration of the 30-day period  
7 contract to sell the land to the proposed purchaser named in the  
8 notice of proposed sale upon the terms specified therein. If the  
9 owner fails to close upon the proposed sale transaction, the land  
10 shall again become subject to the committee's right of first  
11 refusal as provided by this section.

12 b. The provisions of this section shall apply to sales of fee  
13 simple interest in land that becomes enrolled in a farmland  
14 preservation program or a municipally approved farmland  
15 preservation program<sup>1</sup> subsequent to the effective date of this  
16 act, except that any person enrolled<sup>1</sup> in a farmland  
17 preservation program [established]<sup>1</sup> prior to the effective date  
18 of this act may agree to provide this right of first refusal in a  
19 manner consistent with this section.

20 3. A certificate executed and acknowledged by the  
21 committee stating that the provisions of section 2 of this act  
22 have been met by the owner, and that the right of first refusal  
23 of the committee has terminated, shall be conclusive upon the  
24 committee and the owner in favor of all persons who rely  
25 thereon in good faith, and this certificate shall be furnished to  
26 any owner who has complied with the provisions of section 2 of  
27 this act.

28 4. The committee shall give priority to the purchase of land  
29 in those cases in which the committee determines that sale of  
30 the land to a third party is likely to lead to loss of all or  
31 substantially all of the land for agricultural use and production  
32 or is likely to negatively impact on the maintenance of a  
33 positive agricultural business climate in the municipality or  
34 county in which the land is located.

35 5. Any land acquired by the committee pursuant to the terms  
36 of this act shall be held of record in the name of the State and  
37 shall be offered for sale with a restriction prohibiting  
38 nonagricultural development by the State without complying  
39 with the provisions of this act relating to the committee's right

1 of first refusal.

2 6. Such moneys as are reasonable and necessary to carry out  
3 the intent of this act shall be appropriated from the "Farmland  
4 Preservation Fund" established pursuant to section 5 of the  
5 "Farmland Preservation Bond Act of 1981," P.L.1981, c.276.

6 7. Section 17 of P.L.1983, c.32 (C.4:1C-24) is amended to  
7 read as follows:

8 17. a. Landowners within a municipally approved program or  
9 other farmland preservation program shall enter into an  
10 agreement with the board, and the municipal governing body, if  
11 appropriate, to retain the land in agricultural production for a  
12 minimum period of eight years. The agreement shall constitute  
13 a restrictive covenant and shall be filed with the municipal tax  
14 assessor and recorded with the county clerk in the same manner  
15 as a deed. The recording of this agreement shall include  
16 notification that the committee may exercise the right of first  
17 refusal on proposed sales of a fee simple absolute interest in the  
18 land in a farmland preservation program pursuant to section 2 of  
19 P.L....., c..... (C.....) (pending before the  
20 Legislature as this bill).

21 b. The landowner shall be eligible to apply to the local soil  
22 conservation district and the board for a grant for a soil and  
23 water conservation project approved by the State Soil  
24 Conservation Committee and to the board to sell a development  
25 easement on the land, subject to the provisions of this act.

26 c. The landowner or farm operator as an agent for the  
27 landowner may apply to the local soil conservation district and  
28 the board for a grant for a soil and water conservation project  
29 approved by the State Soil Conservation Committee on land  
30 included within a municipally approved program or other  
31 farmland preservation program and restricted by an agreement  
32 entered into pursuant to subsection a. of this section.

33 d. Approval by the local soil conservation district and the  
34 board for grants for soil and water conservation projects shall be  
35 contingent upon a written agreement by the person who would  
36 receive funds that the project shall be maintained for a  
37 specified period of not less than three years, and shall be a  
38 component of a farm conservation plan approved by the local  
39 soil conservation district.

1 e. If the landowner applying for funds for a soil and water  
conservation project pursuant to this section provides 50% of  
3 those funds without assistance from the county, the local soil  
conservation district shall review, approve, conditionally  
5 approve or disapprove the application. The committee shall  
certify that the land on which the soil and water conservation  
7 project is to be conducted is part of a municipally approved  
program or other farmland preservation program and restricted  
9 by an agreement entered into pursuant to the provisions of this  
section.

11 (cf: P.L.1983, c.32, s.24)

8. This act shall take effect immediately.

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15 AGRICULTURE  
State Government

17

Establishes a 30-day period during which the State may exercise  
19 its right of first refusal prior to the sale of certain farmland in  
the State.

2 conservation district shall review; approve, conditionally  
 2 approve or disapprove the application. The committee shall  
 4 certify that the land on which the soil and water conservation  
 4 project is to be conducted is part of a municipally approved  
 6 program or other farmland preservation program and restricted  
 6 by an agreement entered into pursuant to the provisions of this  
 section.

8 8. This act shall take effect immediately, but shall remain  
 inoperative until the approval by the voters of P.L. .... , c.  
 10 ..... (now pending before the Legislature as Assembly Bill No.  
 3557 of 1986 and Senate Bill No. 3167 of 1987).

12

14

### STATEMENT

16 This bill allows the State the right of first refusal to purchase  
 fee simple absolute title to certain farmlands prior to their sale.

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### AGRICULTURE State Government

22

24 Establishes a 30-day period during which the State may exercise  
 its right of first refusal prior to the sale of certain farmland in  
 the State.

ASSEMBLY COMMITTEE ON CONSERVATION,  
NATURAL RESOURCES AND ENERGY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1361

STATE OF NEW JERSEY

DATED: January 25, 1988

Assembly Bill No. 1361 is favorably reported by the committee.

This bill requires any owner of land which is enrolled in an approved farmland preservation program to notify the State Agriculture Development Committee at least 60 days prior to a proposed sale of a fee simple absolute interest in the land. This bill also provides that the State shall have the right of first refusal on substantially similar contract terms as the proposed purchaser of agricultural land.

The State Agriculture Development Committee is required to notify the owner if it intends to exercise its right of first refusal within the first 30 days after receiving notice from the owner and then exercise that right within 60 days following the 30-day period. The bill further provides that if the committee does not notify the owner of its intent to exercise its right of first refusal within the 30-day period, the owner then may sell the land to the proposed purchaser. If the owner does not close on the proposed sales contract, the provisions of the bill relating to the State's right of first refusal again apply to the land.

The bill also provides for a certificate to be issued to the owner certifying that the owner is in full compliance with the provisions of this bill and that the State's right of first refusal has terminated.

The bill requires the committee, in purchasing land using its right of first refusal, to give priority to cases in which it determines that the sale of the land would result in the loss of the land for agricultural use and production or would be detrimental to the agricultural business climate in the municipality or county where the land is located. Moneys to carry out the purposes of the bill shall be appropriated from the "Farmland Preservation Fund" established under the "Farmland Preservation Bond Act of 1981," P.L.1981, c.276.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

SENATE NATURAL RESOURCES  
AND AGRICULTURE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1361

STATE OF NEW JERSEY

DATED: APRIL 25, 1988

The Senate Natural Resources and Agriculture Committee favorably reported Assembly Bill No. 1361.

This bill requires any owner of land which is enrolled in an approved farmland preservation program to notify the State Agriculture Development Committee at least 60 days prior to a proposed sale of a fee simple absolute interest in the land. This bill also provides that the State shall have the right of first refusal on substantially similar contract terms as the proposed purchaser of agricultural land.

The State Agriculture Development Committee is required to notify the owner if it intends to exercise its right of first refusal within the first 30 days after receiving notice from the owner and then exercise that right within 60 days following the 30-day period. The bill further provides that if the committee does not notify the owner of its intent to exercise its right of first refusal within the 30-day period, the owner then may sell the land to the proposed purchaser. If the owner does not close on the proposed sales contract, the provisions of the bill relating to the State's right of first refusal again apply to the land.

The bill also provides for a certificate to be issued to the owner certifying that the owner is in full compliance with the provisions of this bill and that the State's right of first refusal has terminated.

The bill requires the committee, in purchasing land using its right of first refusal, to give priority to cases in which it determines that the sale of the land would result in the loss of the land for agricultural use and production or would be detrimental to the agricultural business climate in the municipality or county where the land is located. Moneys to carry out the purposes of the bill would be appropriated from the "Farmland Preservation Fund" established under the "Farmland Preservation Bond Act of 1981," P.L. 1981, c. 276.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

December 5, 1988

ASSEMBLY BILL NO. 1361

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 1361 with my objections for reconsideration.

This bill grants to the State a 30-day right of first refusal prior to the sale of certain farmland. Specifically, the bill requires any owner of land that is enrolled in a farmland preservation program to notify the State Agriculture Development Committee at least 60 days prior to a proposed sale of the land. The State may then exercise its option within 30 days to purchase the property on substantially similar contract terms as the proposed purchaser of the agricultural parcel.

The right of first refusal provides the State with another avenue through which to continue the preservation of our bountiful and much needed farmland. As such, I support a State option to purchase prime farmland and wholeheartedly endorse the good work of legislators such as Assemblywoman Ogden in fighting the battle against rampant loss of agricultural land in New Jersey.

Notwithstanding my support for this proposal, I cannot sign the bill in its current form. It has come to my attention that the bill was intended to apply only to parcels of farmland that become enrolled in a preservation program after its effective date. However, the language of the bill indicates that the State's right of first refusal will attach to property already enrolled in such preservation programs. Were that the case, landowners who are now in farmland preservation programs would become subject to a substantial limitation to which they had not agreed.

Such an expansive application of the bill was never intended. Further, I believe that any restriction on the transferability of title to property, no matter how worthy the purpose, should be conservatively applied. In order to ensure that only those landowners who have prior notice of the State's right of first refusal become subject to its terms, I am making several changes to the bill to clarify the applicability of that right.

Therefore, I herewith return Assembly Bill No. 1361 and recommend that it be amended as follows:

Page 1, Section 2, Line 15: After "land" insert "that becomes"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

Page 1, Section 2, Line 16: After "program" insert "after this bill's effective date and"

Page 2, Section 2, Line 11: After "land" insert "that becomes enrolled in a farmland preservation program or a municipally approved farmland preservation program"

Page 2, Section 2, Line 12: After "person" insert "enrolled"

Page 2, Section 2, Line 13: Delete "established"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel