New Jersey PACE Enabling Laws

N.J. Stat. §§ 4:1C-1 to 4:1C-55, 13:8C-31 to 13:8C-48
Current through the 218th Second Annual Session 2019

Title 4. Agriculture and Domestic Animals (Chs. 1 — 28)

Chapter 1C. Right to Farm Act; Agriculture Retention and Development Act; State Transfer of Development Rights Bank Act (§§ 4:1C-1 — 4:1C-55)

§ 4:1C-1. Short title

This act shall be known and may be cited as the "**Right to Farm Act**."

History: L.1983, c. 31, § 1, eff. Jan. 26, 1983.

§ 4:1C-2. Legislative findings

The Legislature finds and declares that:

a. The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;

b. Several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;

c. It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;

d. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;

e. It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.

History: L. 1983, c. 31, § 2, eff. Jan. 26, 1983.

§ 4:1C-3. Definitions.

As used in this act:

"Board" or "county board" means a county agriculture development board established pursuant to section 7 of P.L.1983, c.32 (C.4:1C-14).

"Commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (3) a farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth $10,000 or more annually.

"Committee" means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c.31 (C.4:1C-4).

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

"Farm market" means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least $2,500.

History: L. 1983, c. 31, § 3; amended 1998, c. 48, § 1; amended 2015, c. 75, § 1.

§ 4:1C-3.1. Certain beekeeping operations protected by "Right to Farm Act."

Notwithstanding the provisions of section 3 of P.L.1983, c.31 (C.4:1C-3), or any rules or regulations adopted pursuant thereto, to the contrary, a farm management unit that qualifies as a commercial farm for the purposes of the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et seq.), because it is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth $10,000 or more annually, shall be entitled to the protections provided to any other commercial farm under that act but not for agricultural or horticultural activities that are not apiary-related activities, unless the farm management unit also qualifies as a commercial farm pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3) for reasons other than as a beekeeping operation as described in that section.

History: L. 2015, c. 75, § 2.

§ 4:1C-4. State agriculture development committee; establishment; membership; terms; vacancies; meetings; minutes; staff

a. In order that the State's regulatory action with respect to agricultural activities may be undertaken with a more complete understanding of the needs and difficulties of agriculture, there is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Agriculture Development Committee. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the committee is allocated within the Department of Agriculture, but, notwithstanding that allocation, the committee shall be independent of any supervision or control by the State Board of Agriculture, by the department or by the secretary or any officer or employee thereof, except as otherwise expressly provided in this act. The committee shall constitute an instrumentality of the State, exercising public and essential governmental functions, and the exercise by the committee of the powers conferred by this or any other act shall be held to be an essential governmental function of the State.

b. The committee shall consist of 11 members, five of whom shall be the Secretary of Agriculture, who shall serve as chairman, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer and the Dean of Cook College, Rutgers University, or their designees, who shall serve ex officio, and six citizens of the State, to be appointed by the Governor with the advice and consent of the Senate, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land that they farm, and two of whom shall represent the general public. With respect to the members actively engaged in farming, the State Board of Agriculture shall recommend to the Governor a list of potential candidates and their alternates to be considered for each appointment.

c. (1) Of the six members first to be appointed, two shall be appointed for terms of two years, two for terms of three years and two for terms of four years. Thereafter, all appointments shall be made for terms of four years. Each of these members shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. A member shall be eligible for reappointment for no more than two consecutive terms. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

(2) When an appointed member actively engaged in farming notifies the chairman that the member is unable to attend a publicly noticed meeting, an alternate may be chosen to serve for that member at the meeting. The alternate member shall be chosen by the Governor, in consultation with the President and the Vice President of the State Board of Agriculture, with the advice and consent of the Senate. The alternate member shall be a past member of the State Board of Agriculture who served pursuant to R.S.4:1-4, provided, however, that in no case shall the alternate member have been removed from office pursuant to section 3 of P.L.1948, c.447 (C.4:1-4.1), or a past member of the State Agriculture Development Committee.

(3) When an appointed member representing the general public notifies the chairman that the member is unable to attend a publicly noticed meeting, an alternate may be chosen to serve for that member at the meeting. The alternate member shall be chosen by the Governor, with the advice and consent of the Senate.

d. Members of the committee shall receive no compensation but the appointed members may, subject to the limits of funds appropriated or otherwise made available for these purposes, be reimbursed for expenses actually incurred in attending meetings of the committee and in performance of their duties as members thereof.

e. The committee shall meet at the call of the chairman as soon as may be practicable following appointment of its members and shall establish procedures for the conduct of regular and special meetings, including procedures for the notification of departments of State regulating the activities of commercial agriculture, provided that all meetings are conducted in accordance with the provisions of the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

f. A true copy of the minutes of every meeting of the committee shall be prepared and forthwith delivered to the Governor. No action taken at such meeting by the committee shall have force or effect until 15 days, exclusive of Saturdays, Sundays and public holidays, after such copy of the minutes shall have been so delivered. If, in said 15-day period, the Governor returns such copy of the minutes with a veto of any action taken by the committee at such meeting, such action shall be null and void and of no force and effect.

g. The department shall provide any personnel that may be required as staff for the committee.

History: L. 1983, c. 31, § 4; amended 2017, c. 385, § 1.

§ 4:1C-5. Powers of committee

The committee may:

a. Adopt bylaws for the regulation of its affairs and the conduct of its business;

b. Adopt and use a seal and alter the same at its pleasure;

c. Sue and be sued;

d. Apply for, receive, and accept from any federal, State, or other public or private source, grants or loans for, or in aid of, the committee's authorized purposes;

e. Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable for the purposes of the committee or to carry out any power expressly given in this act;

f. Adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;

g. Request assistance and avail itself of the services of the employees of any State, county or municipal department, board, commission or agency as may be made available for these purposes.

History: L. 1983, c. 32, § 5, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-6. Duties of committee

The committee shall:

a. Consider any matter relating to the improvement of farm management practices;

b. Review and evaluate the proposed rules, regulations and guidelines of any State agency in terms of feasibility, effect and conformance with the intentions and provisions of this act;

c. Study, develop and recommend to the appropriate State departments and agencies thereof a program of agricultural management practices which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management, and labor practices;

d. Upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the committee of the reasons for accepting, conditionally accepting or rejecting the committee's recommendations and submit a schedule for implementing all or a portion of the committee's recommendations.

e. Within 1 year of the effective date of this act and at least annually thereafter, recommend to the Governor, the Legislature and the appropriate State departments and agencies thereof any actions which should be taken that recognize the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in the State, minimize unnecessary constraints on essential agricultural activities, and are consistent with the promotion of the public health, safety and welfare.

History: L. 1983, c. 31, § 5, eff. Jan. 26, 1983.

§ 4:1C-7. Additional duties of committee

The committee shall:

a. Establish guidelines and adopt criteria for identification of agricultural lands suitable for inclusion in agricultural development areas and farmland preservation programs to be developed and adopted by a board applying for moneys from the fund;

b. Certify to the secretary that the board has approved the agricultural development area and the farmland preservation program within the area where matching grants from the fund shall be expended;

c. Review State programs and plans and any other public or private action which would adversely affect the continuation of agriculture as a viable use of the land in agricultural development areas and recommend any administrative action, executive orders or legislative remedies which may be appropriate to lessen these adverse effects;

d. Study, develop and recommend to the departments and agencies of State government a program of recommended agricultural management practices appropriate to agricultural development areas, municipally approved programs (provided that these practices shall not be more restrictive than for those areas not included within municipally approved programs) and other farmland preservation programs, which program shall include but not necessarily be limited to: air and water quality control; noise control; pesticide control; fertilizer application; soil and water management practices; integrated pest management; and labor practices;

e. Review and approve, conditionally approve or disapprove all applications for funds pursuant to the provisions of this act; and

f. Generally act as an advocate for and promote the interests of productive agriculture and farmland retention within the administrative processes of State government.

History: L. 1983, c. 32, § 6, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-8. Use of appropriations

The secretary shall use the sum of money appropriated by section 31 of this act, and any other sums as may be appropriated from time to time for like purposes, to assist the committee in administering the provisions of this act to make grants to assist boards or any other local units as authorized herein, to acquire development easements, to purchase fee simple absolute titles to farmland for resale with agricultural deed restrictions for farmland preservation purposes, and to make grants to landowners to fund soil and water conservation projects, on land devoted to farmland preservation programs within duly certified agricultural development areas.

With respect to moneys to be utilized to make grants for soil and water conservation projects, the secretary shall not approve any grant unless it shall be for a project which is also part of a farm conservation plan approved by the local soil conservation district.

History: L. 1983, c. 32, § 4; amended 1988, c. 4, § 2.

§ 4:1C-9. Commercial farm owners, operators; permissible activities

Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;

b. Process and package the agricultural output of the commercial farm;

c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;

d. Replenish soil nutrients and improve soil tilth;

e. Control pests, predators and diseases of plants and animals;

f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;

g. Conduct on-site disposal of organic agricultural wastes;

h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm;

i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of P.L.2009, c.213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor and pursuant to section 3 of P.L.2009, c.213 (C.4:1C-9.2); and

j. Engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

History: L. 1983, c. 31, § 6; amended 1998, c. 48, § 2; 2003, c. 157, § 6; 2009, c. 213, § 2.

§ 4:1C-9.1. Rules, regulations adopted by State Agriculture Development Committee

a. The State Agriculture Development Committee, in consultation with the Department of Labor, shall adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations determining the classification for agriculture, forestry, fishing, and trapping under the North American Industry Classification System of codes, and for the production of agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities that are described in the Standard Industrial Classification codes for agriculture, forestry, fishing and trapping, for the purposes of compliance with P.L. 1983, c. 31 (C. 4:1C-1 et seq.). The State Agriculture Development Committee shall ensure that the provisions of P.L. 1983, c. 31 (C. 4:1C-

1 et seq.) shall continue to apply to any owner or operator of a commercial farm, or other person, to whom the provisions applied prior to the effective date of P.L. 2003, c. 157 (C. 13:1D-13.8 et al.).

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) to the contrary, the State Agriculture Development Committee may, immediately upon filing the regulations with the Office of Administrative Law, adopt such temporary regulations as the committee determines necessary to implement the provisions of P.L. 2003, c. 157 (C. 13:1D-13.8 et al.). The regulations shall be in effect for a period not to exceed 270 days after the date of filing, except that in no case shall the regulations be in effect one year after the effective date of P.L. 2003, c. 157 (C. 13:1D-13.8 et al.). The regulations may thereafter be amended, adopted or readopted as the committee determines necessary in accordance with the "Administrative Procedure Act".

History: L. 2003, c. 157, § 5.

§ 4:1C-9.2. Committee to develop rules, regulations; BPU to provide technical assistance

a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.):

(1) such rules and regulations as may be necessary for the implementation of subsection i. of section 6 of P.L.1983, c.31 (C.4:1C-9); and

(2) agricultural management practices for biomass energy generation on commercial farms, including, but not necessarily limited to, standards for the management of odor, dust, and noise.

b. The Board of Public Utilities shall provide technical assistance and support to the State Agriculture Development Committee with regard to the committee's responsibilities in connection with this section and subsection i. of section 6 of P.L.1983, c.31 (C.4:1C-9).

c. Notwithstanding any provision of this section or subsection i. of section 6 of P.L.1983, c.31 (C.4:1C-9) to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c.111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c.111.

d. For the purposes of this section and subsection i. of section 6 of P.L.1983, c.31 (C.4:1C-9), "biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the commercial farm and which can be used to generate energy in a sustainable manner.

History: L. 2009, c. 213, § 3.

§ 4:1C-9.3 Rules, regulations

a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary for the implementation of P.L.2014, c.16 (C.4:1C-10.5 et al.).

b. The committee may adopt, as may be necessary and appropriate, agricultural management practices for the implementation of P.L.2014, c.16 (C.4:1C-10.5 et al.).
History: L. 2014, c. 16, § 5.

§ 4:1C-10. Commercial agricultural operation not a nuisance, compliance with practices

In all relevant actions filed subsequent to the effective date of P.L.1998, c. 48 (C.4:1C-10.1 et al.), there shall exist an irrebuttable presumption that no commercial agricultural operation, activity or structure which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules

and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety, shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

History: L. 1983, c. 31, § 7; amended 1998, c. 48, § 3.

§ 4:1C-10.1. Filing of complaint; process

a. Any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court.

b. In the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint.

c. In the event the committee has not recommended an agricultural management practice concerning activities addressed by a complaint, the county board shall forward the complaint to the committee for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the committee shall hold a public hearing and issue its decision, in writing, to the county board. The county board shall hold a public hearing and issue its findings and recommendations within 60 days of the receipt of the committee's decision.

d. Any person aggrieved by the decision of the county board shall appeal the decision to the committee within 10 days. The committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

e. The decision of the State Agriculture Development Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court. Any decision of a county agriculture development board that is not appealed shall be binding.

History: L. 1998, c. 48, § 5.

§ 4:1C-10.2. Appeal of decision

Any person aggrieved by any decision of a county board regarding specific agricultural management practices or conflict resolution, may appeal the decision to the State Agriculture Development Committee in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The decision of the State Agriculture Development Committee shall be considered a final administrative agency decision.

History: L. 1998, c. 48, § 6.

§ 4:1C-10.3. New rule adoption process

a. In proposing a rule for adoption, the agency involved shall issue an agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agricultural industry that shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

b. During the public comment period on the proposed rule, the State Agriculture Development Committee shall review the rule proposal to determine its impact on the agriculture industry of the State.

c. If the State Agriculture Development Committee determines that the proposed rule may have a significant adverse impact on the agricultural industry of the State and notifies the relevant agency of that determination during the public comment period on the proposed rule, the agency shall consult with the State Agriculture Development Committee prior to the adoption of the rule.

History: L. 1998, c. 48, § 7.

§ 4:1C-10.4. Rules, regulations, standards

a. The State Agriculture Development Committee shall adopt, in consultation with the Attorney General and pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), standards determining what constitutes a direct threat to public safety pursuant to section 6 and section 7 of P.L.1983, c. 31 (C.4:1C-9 and C.4:1C-10).

b. The State Agriculture Development Committee shall adopt, in consultation with the Department of Health and Senior Services and pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), standards determining what constitutes a direct threat to public health pursuant to section 6 and section 7 of P.L.1983, c. 31 (C.4:1C-9 and C.4:1C-10).

c. The State Agriculture Development Committee shall adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.1998, c. 48 (C.4:1C-10.1) and P.L.1983, c. 31 (C.4:1C-1 et al.).

History: L. 1998, c. 48, § 8.

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§ 4:1C-11. Short title

This act shall be known and may be cited as the **"Agriculture Retention and Development Act."**

History: L. 1983, c. 32, § 1, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-12. Legislative findings and declarations

The Legislature finds and declares that:

a. The strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State and the welfare of the citizens of the State, and that the Legislature and the people have demonstrated recognition of this fact through their approval of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c. 276;

b. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;

c. It is necessary to authorize the establishment of State and county organizations to coordinate the development of farmland preservation programs within identified areas where agriculture will be presumed the first priority use of the land and where certain financial, administrative and regulatory benefits will be made available to those landowners who choose to participate, all as hereinafter provided.

History: L. 1983, c. 32, § 2, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-13. Definitions

As used in this act:

a. "Agricultural development areas" means areas identified by a county agricultural development board pursuant to the provisions of section 11 of this act and certified by the State Agriculture Development Committee;

b. "Agricultural use" means the use of land for common farmsite activities, including but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing;

c. "Board" means a county agriculture development board established pursuant to section 7 or a subregional agricultural retention board established pursuant to section 10 of this act;

d. "Committee" means the State Agriculture Development Committee established pursuant to section 4 of the "Right to Farm Act," P.L. 1983, c. 31 (C. 4:1C-4);

e. “Cost,” as used with respect to cost of fee simple absolute title, development easements or soil and water conservation projects, includes, in addition to the usual connotations thereof, interest or discount on bonds; cost of issuance of bonds; the cost of inspection, appraisal, legal, financial, and other professional services, estimates and advice; and the cost of organizational, administrative and other work and services, including salaries, supplies, equipment and materials necessary to administer this act;

f. “Development easement” means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of this act and any relevant rules or regulations promulgated pursuant hereto;

g. “Development project” means any proposed construction or capital improvement for nonagricultural purposes;

h. “Farmland preservation program” or “municipally approved farmland preservation program” (hereinafter referred to as municipally approved program) means any voluntary program, the duration of which is at least 8 years, authorized by law enacted subsequent to the effective date of the “Farmland Preservation Bond Act of 1981,” P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to this act and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to section 14 of this act;

i. “Fund” means the “Farmland Preservation Fund” created pursuant to the “Farmland Preservation Bond Act of 1981,” P.L. 1981, c. 276;

j. “Governing body” means, in the case of a county, the governing body of the county, and in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality;

k. “Secretary” means the Secretary of Agriculture;

l. “Soil and water conservation project” means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity;

m. “Soil conservation district” means a governmental subdivision of this State organized in accordance with the provisions of R.S. 4:24-1 et seq.;

n. “Agricultural deed restrictions for farmland preservation purposes” means a statement containing the conditions of the conveyance and the terms of the restrictions set forth in P.L. 1983, c. 32 and as additionally determined by the committee on the use and the development of the land which shall be recorded with the deed in the same manner as originally recorded.

History: L. 1983, c. 32, § 3; amended 1988, c. 4, § 1.

§ 4:1C-14. County boards

a. The governing body of any county may, by resolution duly adopted, establish a public body under the name and style of “The County Agriculture Development Board,” with all or any significant part of the name of the county inserted. Every board shall consist of three non-voting members as follows: a representative of the county planning board; a representative of the local soil conservation district; and the county agent of the New Jersey Cooperative Extension Service whose jurisdiction encompasses the boundaries of the county; and seven voting members who shall be residents of the county, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land they farm, and three of whom shall represent the general public, appointed by the board of chosen freeholders, or, in the counties operating under the county executive plan or county supervisor plan pursuant to the provisions of the “Optional County Charter Law,” P.L.1972, c.154 (C.40:41A-1 et seq.), by the county executive, or the county supervisor, as the case may be, with the advice and consent of the board of chosen freeholders. With respect to the members actively engaged in farming, the county board of agriculture shall recommend to the board of chosen freeholders, the county executive or the county supervisor, as appropriate, a list of potential candidates and their alternates to be considered for each appointment.

b. Of the seven members first to be appointed, three shall be appointed for terms of two years, two for terms of three years, and two for terms of four years. Thereafter, all appointments shall be made for terms of four years. Each of these members shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. The board of chosen freeholders, county executive or county supervisor, as appropriate, may appoint such other advisory members to the board as they may deem appropriate.

d. Members of the board shall receive no compensation but the appointive members may, subject to the limits of funds appropriated or otherwise made available for these purposes, be reimbursed for expenses actually incurred in attending meetings of the board and in performance of their duties as members thereof.

e. The board shall meet as soon as may be practicable following the appointment of its members and shall elect a chairman from among its members and establish procedures for the conduct of regular and special meetings, provided that all meetings are conducted in accordance with the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The chairman shall serve for a term of one year and may be reelected.

f. The chairman shall appoint three members actively engaged in farming to serve with the representatives of the general public for the purpose of mediating disputes pursuant to the provisions of section 19 of this act.

g. Notwithstanding the provisions of subsections a. and b. of this section, any public body established by the governing body of any county prior to May 3, 1982 which was established to carry out functions substantially similar to the functions of boards pursuant to this act and which proposes to apply for grants pursuant hereto may carry out the functions authorized herein, provided that within five years following the effective date of this act those boards established prior to May 3, 1982 shall reorganize so that the board reflects no more than a simple majority of members actively engaged in farming or equal representation of the general public and those actively engaged in farming.

History: L. 1983, c. 32, § 7; amended 1993, c. 19, § 1.

§ 4:1C-15. Duties

Every board shall:

a. Develop and adopt, after public hearings, agricultural retention and development programs, which shall have as their principal purpose the long-term encouragement of the agricultural business climate and the preservation of agricultural land in the county;

b. Establish the minimum acreage of significant masses of reasonably contiguous land required for the creation of a municipally approved program or other farmland preservation programs;

c. Establish minimum standards for the inclusion of land in a municipally approved program or other farmland preservation programs;

d. Review and approve, conditionally approve or disapprove petitions for the formation of a municipally approved program or other farmland preservation programs, and monitor the operations thereof;

e. Review and approve, conditionally approve or disapprove, prior to any applications to the committee, any request for financial assistance authorized by this act;

f. Monitor and make appropriate recommendations to the committee and to county and municipal governing bodies and boards with respect to resolutions, ordinances, regulations and development approvals which would threaten the continued viability of agricultural activities and farmland preservation programs within agricultural development areas;

g. At the request of a municipality, require that any person proposing any nonagricultural development in an agricultural development area prepare and submit a statement as to the potential impact the proposed development would have on agricultural activities in the area.

History: L. 1983, c. 32, § 8, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-16. Powers

Every board may:

a. Develop an educational and informational program concerning farmland preservation techniques and recommended agricultural management practices to advise and assist municipalities, farmers and the general public with respect to the implementation of these techniques;

b. Provide assistance to farm operators concerning permit applications and information regarding the regulatory practices of State government agencies.

History: L. 1983, c. 32, § 9, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-17. Subregional agricultural retention board; membership; dissolution

a. If any board of chosen freeholders has not created a board within 1 year of the effective date of this act, the governing body of any municipality located within that county may, singly or jointly by parallel ordinance with other contiguous municipalities within the county, establish a subregional agricultural retention board, which shall have the same responsibilities as a county board, except that its jurisdiction shall not exceed the boundaries of the municipality or municipalities establishing the board. Every subregional agricultural retention board may receive State moneys from the fund pursuant to the provisions of this act.

b. The members of a subregional agricultural retention board shall be appointed in the same manner as a county board, except that the planning board representative shall be from the municipal planning board and the appointive members shall be residents of the municipality. If two or more municipalities jointly create a subregional board, the number of members thereof shall be multiplied by the number of municipalities involved.

c. If the governing body of the county creates a board subsequent to the establishment of a subregional agricultural retention board, the subregional body shall, within 90 days of the date of the creation of the board, be dissolved but may remain advisory to the board. The board shall honor any contractual commitments of the subregional agricultural retention board.

History: L. 1983, c. 32, § 10, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-18. Agricultural development area; recommendation and approval

The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

a. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a nonconforming use;

b. Is reasonably free of suburban and conflicting commercial development;

c. Comprises not greater than 90% of the agricultural land mass of the county;

d. Incorporates any other characteristics deemed appropriate by the board.

Approval of the agricultural development area by the board shall be in no way construed to authorize exclusive agricultural zoning or any zoning which would have the practical effect of exclusive agricultural zoning, nor shall the adoption be used by any tax official to alter the value of the land identified pursuant hereto or the assessment of taxes thereon.

History: L. 1983, c. 32, § 11, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-19. Land acquisition or construction in agriculture development area; notice of intent; review; hearing

a. Any public body or public utility which intends to exercise the power of eminent domain, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L. 1971, c. 361 (C. 20:3-1 et seq.), for the acquisition of land included in an agricultural development area, or which intends to advance a grant, loan, interest subsidy or other

funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures, shall file a notice of intent with the board and the committee, the provisions of any other law, rule or regulation to the contrary notwithstanding, 30 days prior to the initiation of this action. This notice shall contain a statement of the reasons for the acquisition and an evaluation of alternatives which would not include action in the agricultural development area.

b. Within 30 days of the receipt of this notice of intent, the board and the committee shall review the proposed action to determine its effect upon the preservation and enhancement of agriculture in the agricultural development area, the municipally approved program, and upon overall State agricultural preservation and development policies. If the board or the committee finds that the proposed action would cause unreasonably adverse effects on the agricultural development area, or State agricultural preservation and development policies, the board or the committee may direct that no action be taken thereon for 60 days, during which time a public hearing shall be held by the board or the committee in the agricultural development area and a written report containing the recommendations of the board or the committee concerning the proposed acquisition or development project shall be made public. Notice of the hearing shall be afforded in accordance with the provisions of the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.).

c. The secretary may, upon finding that the provisions of this section have been violated, request the Attorney General to bring an action to enjoin the acquisition or development project.

History: L. 1983, c. 32, § 12, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-20. Petition for farmland preservation program; approval; agreement between board and landowner

a. Any one or more owners of land which qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.), and which is included in an agricultural development area, may petition the board for the creation of a farmland preservation program. The petition shall include a map of the boundaries of the proposed farmland preservation program and any other information deemed appropriate by the board.

b. Approval of the petition by the board and creation of the farmland preservation program shall be signified by an agreement between the board and the landowner to retain the land in agricultural production for a minimum period of 8 years. The agreement shall constitute a restrictive covenant and shall be filed and recorded with the county clerk in the same manner as a deed.

History: L. 1983, c. 32, § 13, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-21. Municipally approved program

a. Any one or more owners of land which qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), and which is included in an agricultural development area may petition the board for the creation of a municipally approved program comprising that land; provided that the owner or owners own at least the minimum acreage established by the board. The petition shall include a map of the boundaries of the municipally approved program and any other information deemed appropriate by the board.

b. Upon receipt thereof, the board shall review this petition for conformance with minimum eligibility criteria as established by the committee and the board. If the board finds that the criteria have been met, it shall immediately forward a copy of the petition to the county planning board, the governing body of any municipality wherein the proposed municipally approved program is located, and to the planning board of each affected municipality.

c. Within 60 days of receipt of the petition, the municipal planning board shall review and report to the municipal governing body the potential effect of the proposed municipally approved program upon the planning policies and objectives of the municipality.

d. The municipal governing body shall, after public hearing and within 120 days of receipt of the report, recommend to the board, by ordinance duly adopted, that the municipally approved program boundaries be approved, conditionally approved with proposed geographical modifications, or disapproved.

e. Upon receipt of a recommendation by the governing body to approve the petition, the board shall forward the petition for the creation of the municipally approved program and the municipal ordinance approving the municipally approved program to the county planning board. This action shall constitute creation of a municipally approved program.

f. Upon receipt of a recommendation by the governing body to conditionally approve the petition with proposed geographical modifications, the board shall review the recommendation for conformance with minimum eligibility criteria. If the board finds that the criteria have been met and that the proposed modifications encourage agriculture retention and development to the greatest practicable extent, the petition shall be forwarded and adopted pursuant to subsection e. of this section.

g. Upon receipt of a recommendation by the governing body to disapprove the petition, the board shall take no further action and the proposed municipally approved program shall not be adopted.

h. If the governing body proposes modifications to the petition which exclude any land from being included within a municipally approved program, the owner thereof may request that the board mediate on behalf of the landowner with the municipal governing body prior to acting on the recommendation thereof. The landowner may request mediation by the committee with respect to any action taken by the board.

i. The provisions of this section to the contrary notwithstanding, if any municipal governing body fails to act on a petition to create a municipally approved program within 180 days of the receipt by the municipal planning board of the petition, regardless of whether or not the municipal planning board has submitted a report pursuant to subsection c. of this section, the board or the landowner may appeal to the committee to intervene, and the committee may approve or disapprove a petition for the creation of a municipally approved program pursuant to the provisions of this section.

j. The board shall advise owners of any land contiguous to the proposed municipally approved program that a petition has been received, solicit opinions concerning inclusion of this land and, if the board deems appropriate, encourage the inclusion of the land in the municipally approved program.

Any landowner not included in the municipally approved program as initially created may, within two years following the creation date, request inclusion, and upon review by the board and municipal governing body, and a finding that this inclusion is warranted, become part of the municipally approved program; provided that the landowner enters into an agreement pursuant to section 17 of this act for the remaining duration of the municipally approved program.

History: L. 1983, c. 32, § 14; amended 1989, c. 242, § 1.

§ 4:1C-22. Documentation of municipally approved program

The creation of a municipally approved program shall be documented in the following manner:

a. The petition in its final form shall be filed and recorded, in the same manner as a deed, with the county clerk and shall be filed with the municipal clerk;

b. The petition, the municipal ordinance of adoption and the county resolution or ordinance of adoption, as the case may be, shall be filed with the committee; and

c. The petition in its final form shall be filed with the municipal tax assessor for the purpose of qualifying for the exemption from property taxation on new farm structures and improvements within the municipally approved program, as authorized and provided in the Constitution.

The documentation of the creation of the municipally approved program as prescribed herein shall in no way be construed to constitute or in any other way authorize exclusive agricultural zoning.

History: L. 1983, c. 32, § 15, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-23. Zoning of land in program

Notwithstanding the provisions of P.L. 1975, c. 291 (C. 40:55D-1 et seq.) or any other law, rule or regulation to the contrary, no municipality shall alter its zoning ordinance as it pertains to land included within a municipally approved program in any way so as to provide for exclusive agricultural zoning or zoning which has the practical effect of exclusive agricultural zoning for a period of 11 years from the date of the creation of the municipally approved program, unless all landowners within that municipally approved program who entered into an agreement pursuant to the provisions of section 17 of this act agree to that alteration by express written consent at the end of the minimum period required by section 17 of this act.

History: L. 1983, c. 32, § 16, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-24. Development easement, soil, water conservation project; application by landowners in farmland preservation program

a. (1) Landowners within a municipally approved program or other farmland preservation program shall enter into an agreement with the board, and the municipal governing body, if appropriate, to retain the land in agricultural production for a minimum period of eight years.

(2) Any landowner whose land is within a municipally approved program or other farmland preservation program or any landowner whose land qualifies for differential property tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), and which is included in an agricultural development area, may enter into an agreement to convey a development easement on the land to the board. The development easement may be permanent or for a term of 20 years.

(3) Any agreement entered into pursuant to paragraph (1) of this subsection shall constitute a restrictive covenant and shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed. Any development easement conveyed pursuant to paragraph (2) of this subsection shall be filed with the municipal tax assessor and recorded with the county clerk in the same manner as a deed. The recording of any such agreement or development easement of limited term shall include notification that the committee may exercise the first right and option to purchase a fee simple absolute interest in the land pursuant to P.L.1989, c.28 (C.4:1C-38 et al.).

b. A landowner, or a farm operator as an agent for the landowner, whose land is within a municipally approved program or other farmland preservation program, or is subject to a development easement conveyed pursuant to subsection a. of this section, shall be eligible to, and may, apply to the local soil conservation district and the board for a grant for a soil and water conservation project approved by the State Soil Conservation Committee, subject to the provisions of P.L.1983, c.32 (C.4:1C-11 et al.).

c. (Deleted by amendment, P.L.1989, c.310.)

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

e. If the landowner applying for funds for a soil and water conservation project pursuant to this section provides 50% of those funds without assistance from the county, the local soil conservation district shall review, approve, conditionally approve or disapprove the application. The committee shall certify that the land on which the soil and water conservation project is to be conducted has had a development easement conveyed from it pursuant to subsection a. of this section or is part of a municipally approved program or other farmland preservation program.

History: L. 1983, c. 32, § 17; amended 1989, c. 28, § 7; 1989, c. 310, § 1.

§ 4:1C-25. Public body may not exercise right of eminent domain; begin construction

The provisions of any law to the contrary notwithstanding, no public body shall exercise the power of eminent domain for the acquisition of land in a municipally approved program or from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24), nor shall any public body advance a grant,

loan, interest subsidy or other funds within a municipally approved program, or with regard to land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24), for the construction of dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures unless the Governor declares that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative. If the Governor so declares, the provisions of section 12 of P.L.1983, c.32 (C.4:1C-19) shall apply.

History: L. 1983, c. 32, § 18; amended 1989, c. 310, § 2.

§ 4:1C-26. Filing of complaint against agricultural operation

a. In all relevant actions filed subsequent to the effective date of P.L.1983, c.32 (C.4:1C-11 et al.), there shall exist an irrebuttable presumption that no agricultural operation, activity or structure which is conducted or located within a municipally approved program, or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24), and which conforms to agricultural management practices approved by the committee, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

b. In the event that any person wishes to file a complaint to modify or enjoin an agricultural operation or activity under the belief that the operation or activity violates the provisions of subsection a. of this section, that person shall, 30 days prior to instituting any action in a court of competent jurisdiction, petition the board to act as an informal mediator.

c. The board shall, in the course of its regular or special meetings but within 30 days of receipt of the petition, seek to facilitate the resolution of any dispute. No statement or expression of opinion made in the course of a meeting concerning the dispute shall be deemed admissible in any subsequent judicial proceeding thereon.

History: L. 1983, c. 32, § 19; amended 1989, c. 310, § 3.

§ 4:1C-27. Agricultural activities exempt from emergency restrictions

The provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, agricultural activities on land in a municipally approved program, or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24), shall be exempt from any emergency restrictions instituted on the use of water and energy supplies unless the Governor declares that the public safety and welfare require otherwise.

History: L. 1983, c. 32, § 20; amended 1989, c. 310, § 4.

§ 4:1C-28. Acceptable construction standard for farm structure

a. The provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, any criteria developed by a land grant college or a recognized organization of agricultural engineers and approved by the committee for farm structure design shall be the acceptable minimum construction standard for a farm structure located in a municipally approved program or other farmland preservation program or on land from which a development easement has been conveyed pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24).

b. The use by a farm owner or operator of a farm structure design approved pursuant to subsection a. of this section shall, the provisions of any law, rule, regulation or ordinance to the contrary notwithstanding, be exempt from any requirement concerning the seal of approval or fee of an architect or professional engineer.

History: L. 1983, c. 32, § 21; amended 1989, c. 310, § 5.

§ 4:1C-29. Length of program; termination; inclusion of additional landowners

a. The municipally approved program shall remain in effect for a minimum of 8 years, provided that a review of the practicability and feasibility of its continuation shall be conducted by the board and the municipal governing bodies within the year immediately preceding the termination date of the municipally approved program.

b. If subsequent to notification by the board, none of the parties to the agreement entered into pursuant to section 17 of this act notify the board within this 1 year period that they wish to terminate the municipally approved program, the municipally approved program shall continue in effect for another 8-year period and may continue for succeeding 8-year periods, provided that no notice of termination is received by the board during subsequent periods of review.

c. Termination of the municipally approved program at the end of any 8-year period shall occur following the receipt by the board of any notice of termination. The municipal tax assessor shall be notified by the board if the municipally approved program is terminated.

d. Nothing in this section shall be construed to preclude the reformation of a municipally approved program, as initially created pursuant to the provisions of this act.

e. Any landowner not included in a municipally approved program may request inclusion at any time during the review conducted pursuant to subsection a. of this section. If the board and the municipal governing body find that this inclusion would promote agricultural production, the inclusion shall be approved.

History: L. 1983, c. 32, § 22, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-30. Withdrawal of land; taxation

a. Withdrawal of land from the municipally approved program or other farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.) and approval by the board and in the case of a municipally approved program, the municipal governing body, at a regular or special meeting thereof. The approval shall be documented by the filing with the county clerk and county planning board, by the board and municipal governing body, of a resolution or ordinance, as appropriate, therefor. The local tax assessor shall also be notified by the board of this withdrawal.

b. Following approval to withdraw from the municipally approved program, the affected landowner shall pay to the municipality, with interest at the rate imposed by the municipality for nonpayment of taxes pursuant to R.S. 54:4-67, any taxes not paid as a result of qualifying for the property tax exemption for new farm structures or improvements in the municipally approved program, as authorized and provided in the Constitution, and shall repay, on a pro rata basis as determined by the local soil conservation district, to the board or the committee, or both, as the case may be, any remaining funds from grants for soil and water conservation projects provided pursuant to the provisions of this act, except in the case of bankruptcy, death or incapacitating illness of the owner, where no such payback of taxes or grants shall be required.

History: L. 1983, c. 32, § 23, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-31. Development easement purchases

a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L. 1983, c. 32 (C. 4:1C-24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of P.L. 1983, c. 32.

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

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

nonagricultural – agricultural – landowner's

development value – value – asking price

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nonagricultural – agricultural

development value - value

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

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

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

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L. 1989, c. 86 (C. 40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L. 2004, c. 2 (C. 40:55D-158) or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L. 2004, c. 120 (C. 13:20-13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein or elsewhere where a municipal average has been established under subsection c. of this section, upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

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

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

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

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

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

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

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

j. (1) In determining the suitability of land for development easement purchase, the board and the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) The provisions of paragraph (1) of this subsection may also be applied in determining the suitability of land for fee simple purchase for farmland preservation purposes as authorized by P.L. 1983, c. 31 (C. 4:1C-1 et seq.), P.L. 1983, c. 32 (C. 4:1C-11 et seq.), and P.L. 1999, c. 152 (C. 13:8C-1 et seq.).

(3) (a) For the purposes of paragraph (1) of this subsection: "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 2 of P.L. 2001, c. 405 (C. 13:8C-40.2).

(b) For the purposes of paragraph (2) of this subsection, "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 1 of P.L. 2001, c. 405 (C. 13:8C-40.1).

History: L. 1983, c. 32, § 24; amended 1988, c. 4, § 3; 1989, c. 86, § 15; 2001, c. 405, § 3; 2004, c. 2, § 28; 2004, c. 120, § 44.

§ 4:1C-31.1. Fee simple absolute purchases

a. Any landowner of farmland within an agricultural development area certified by the committee may apply to the committee to sell the fee simple absolute title at a price which, in the opinion of the landowner, represents a fair market value of the property.

b. The committee shall evaluate the offer to determine the suitability of the land for purchase. Decisions regarding suitability shall be based on the eligibility criteria for the purchase of development easements listed in section 24 of P.L. 1983, c. 32 (C. 4:1C-31) and the criteria adopted by the committee and the board of that county. The committee shall also evaluate the offer taking into account the amount of the asking price, the asking price relative to other offers, the location of the parcel relative to areas targeted within the county by the board and among the counties, and any other criteria as the committee has adopted pursuant to rule or regulation. The committee may negotiate reimbursement with the county and include the anticipated reimbursement as part of the evaluation of an offer.

c. The committee shall rank the offers according to the criteria to determine which, if any, should be appraised. The committee shall reject any offer for the purchase of fee simple absolute title determined unsuitable according to any criterion in this subsection or adopted pursuant to this subsection, or may defer decisions on offers with a low ranking. The committee shall state, in writing, its reasons for rejecting an offer.

d. Appraisals of the parcel shall be conducted to determine the fair market value according to procedures adopted by regulation by the committee.

e. The committee shall notify the landowner of the fair market value and negotiate for the purchase of the title in fee simple absolute.

f. Any land acquired by the committee pursuant to the provisions of this amendatory and supplementary act shall be held of record in the name of the State and shall be offered for resale by the State, notwithstanding any other law, rule or regulation to the contrary, within a reasonable time of its acquisition with agricultural deed restrictions for farmland preservation purposes as determined by the committee pursuant to the provisions of this act.

g. The committee shall be responsible for the operation and maintenance of lands acquired and shall take all reasonable steps to maintain the value of the land and its improvements.

h. To the end that municipalities may not suffer loss of taxes by reason of acquisition and ownership by the State of New Jersey of property under the provisions of this act, the State shall pay annually on October 1 to each municipality in which property is so acquired and has not been resold a sum of money equal to the tax last assessed and last paid by the taxpayer upon this land and the improvement thereon for the taxable year immediately prior to the time of its acquisition. In the event that land acquired by the State pursuant to this act had been assessed at an agricultural and horticultural use valuation in accordance with provisions of the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.), at the time of its acquisition by the State, no rollback tax pursuant to section 8 of P.L. 1964, c. 48 (C. 54:4-23.8) shall be imposed as to this land nor shall this rollback tax be applicable in determining the annual payments to be made by the State to the municipality in which this land is located.

All sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of these municipalities, and to accomplish this end the sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt.

History: L. 1988, c. 4, § 5; amended 2001, c. 405, § 4.

§ 4:1C-31.2. Rules, regulations

The committee shall adopt rules and regulations necessary to carry out the purposes of this amendatory and supplementary act according to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

History: L. 1988, c. 4, § 6.

§ 4:1C-32. Conveyance of easement following purchase; conditions, restrictions; payment

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

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

c. At the time of settlement of the purchase of a development easement, the landowner, the board, and the committee may agree upon and establish a schedule of payment which provides that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to 40 years from the date of settlement, provided that, if a schedule of installments is agreed upon, the State Comptroller each year shall retain in the fund, or the governing body each year shall retain, an amount of money sufficient to pay the landowner for the current year pursuant to the schedule. For installment purchases, (1) the landowner may receive annually interest on any unpaid balance remaining after the date of settlement, which shall accrue at a rate established in the installment contract; and (2) the committee shall make annual payments to the board in an amount equal to the committee's proportionate annual share of the purchase price of the development easement.

d. Nothing in this section shall prevent a board from receiving a lump sum from the committee and establishing a schedule of installment payments with the landowner.

History: L. 1983, c. 32, § 25; amended 1989, c. 86, § 16; 1992, c. 157, § 6; 1999, c. 163.

§ 4:1C-32.1. Special permit to allow rural microenterprise activity on land; terms defined

a. Any person who owns qualifying land may apply for a special permit pursuant to this section to allow a rural microenterprise activity to occur on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the owner of the premises if the development easement is owned by the committee or a board. If the development easement is owned by a qualifying tax exempt nonprofit organization, the committee, in consultation with the qualifying tax exempt nonprofit organization, may issue a special permit pursuant to this section to the owner of the premises. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days after the date of receipt thereof to provide comments to the committee on the application. Within 90 days after receipt of a completed application, submitted for the purposes of subsection a. of this section, the committee shall approve, approve with conditions, or disapprove the application.

c. There shall be two categories of rural microenterprise activities, as follows:

(1) Class 1 shall include customary rural activities, which rely on the equipment and aptitude historically possessed by the agricultural community, such as snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses; and

(2) Class 2 shall include agriculture support services, which have a direct and positive impact on agriculture by supplying needed equipment, supplies, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor or equipment repair shops.

d. A special permit may be issued pursuant to this section provided that:

(1) the owner of the premises establishes, through the submission of tax forms, sales receipts, or other appropriate documentation, as directed by the committee, that (a) the qualifying land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3), and (b) the owner of the premises is a farmer, as defined pursuant to subsection k. of this section;

(2) the permit is for one rural microenterprise only;

(3) no more than one permit is valid at any one time for use on the qualifying land;

(4) the permit is for a maximum duration of 20 years;

(5) the permit does not run with the land and may not be assigned;

(6) the rural microenterprise does not interfere with the use of the qualifying land for agricultural or horticultural production;

(7) the rural microenterprise utilizes the land and structures in their existing condition, except as allowed in accordance with the use restrictions prescribed in subsection g. of this section;

(8) the total area of land and structures devoted to supporting the rural microenterprise does not exceed a one-acre envelope on the qualifying land;

(9) the rural microenterprise does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(10) the rural microenterprise is not a high traffic volume business, and is undertaken in compliance with the parking and employment restrictions prescribed by subsection h. of this section.

e. The owner of the premises may apply to the committee to renew a permit within 10 years before the date of the scheduled permit expiration. The committee shall review the renewal application in accordance with the process and criteria set forth in this section for the issuance of a special permit, including the consultation required by subsection b. of this section.

f. The committee shall provide reasonable opportunity for the continued operation of a rural microenterprise in the event of:

(1) the death, incapacitation, or retirement of the owner of the premises;

(2) transfer of the ownership of the farm; or

(3) disruption of income from gross sales of agricultural or horticultural products, caused by circumstances beyond the farmer’s control, such as crop failure.

g. The use of land and structures for a rural microenterprise activity shall be subject to the following conditions and restrictions:

(1) A structure that is designated in the deed of easement as agricultural labor housing, or a structure that has been constructed or designated as agricultural labor housing since the date of the conveyance of the easement, shall not be used for the rural microenterprise;

(2) No new structures may be constructed on the premises to support a rural microenterprise. Any structure constructed on the premises since the date of the conveyance of the easement, and in accordance with the farmland preservation deed restrictions, shall not be eligible for a special permit for a rural microenterprise for a period of five years following completion of its construction;

(3) Improvements shall not be made to the interior of a non-residential structure in order to adapt it for residential use;

(4) The entire floor area of existing residential or agricultural building space may be used to support a rural microenterprise where the building has not been substantially altered or finished to support the microenterprise;

(5) No more than 2,500 square feet of the interior of existing residential or agricultural building space may be substantially altered or finished to support the rural microenterprise, except that, at the request of the owner of the premises, the committee may allow the alteration or finishing of up to 100 percent of an existing heritage farm structure, provided that the owner agrees to place on the structure, in a form approved by the committee, a heritage preservation easement, which shall be recorded against the premises, shall be held by the committee, and shall run with the land;

(6) The expansion of existing building space shall be permitted, provided that: (a) the expansion does not exceed 500 square feet in total footprint area; (b) the purpose or use of the expansion is necessary to the operation or functioning of the rural microenterprise; and (c) the area of the proposed footprint of the expansion is reasonably calculated, based solely upon the demands of accommodating the rural microenterprise, and does not incorporate excess space;

(7) Improvements to the exterior of a structure shall be compatible with the agricultural character of the premises, and shall not diminish the historic or cultural character of the structure;

(8) Repairs may be made to the interior or exterior of a building provided that they do not diminish the historic or cultural character of the structure;

(9) The location, design, height, and aesthetic attributes of the rural microenterprise shall reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(10) No public utilities, including water, gas, or sewage, other than those already existing and available on the qualifying land, shall be permitted to be extended to the qualifying land for purposes of the rural microenterprise, except that the establishment of new electric service required for the rural microenterprise shall be permitted;

(11) On-site septic and well facilities may be established, expanded, or improved for the purpose of supporting the rural microenterprise provided such facilities are contained within the one-acre envelope provided for in paragraph (8) of subsection d. of this section; and

(12) No more than a combined total of 5,000 square feet of land may be utilized for the outside storage of equipment, vehicles, supplies, products, or by-products, in association with the microenterprise. Any improvements to the land that are undertaken for the purposes described in this paragraph or paragraph (11) of this subsection shall be limited to those that are necessary either to protect public health and safety or to minimize disturbance of the premises and its soil and water resources.

h. Parking and employment at a rural microenterprise shall be subject to the following conditions and restrictions:

(1) The area dedicated to customer parking shall not exceed 2,000 square feet or provide for more than 10 parking spaces;

(2) Improvements to the parking area shall be limited to those improvements that are required to protect public health and safety or minimize the disturbance of soil and water resources on the premises;

(3) The number of parking spaces shall be sufficient to accommodate visitors to the rural microenterprise under normal conditions; and

(4) At peak operational periods, the maximum number of employees or workers who are associated with the rural microenterprise and work on the premises shall not exceed four full-time employees, or the equivalent, in addition to the owner or operator.

i. Committee approval of a special permit for a rural microenterprise activity pursuant to this section shall not relieve the applicant from obtaining all other permits, approvals, or authorizations that may be required by federal, State, or local law, rule, regulation, or ordinance.

j. (1) A rural microenterprise shall not be considered to be an agricultural use as defined in subsection b. of section 3 of P.L.1983, c.32 (C.4:1C-13).

(2) Nothing in this section shall be interpreted as providing a rural microenterprise with protection under section 6 of the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-9) if that rural microenterprise is not otherwise eligible for such protection.

k. For the purposes of this section:

"Farmer" means the owner and operator of the premises who:

(1) exclusive of any income received from the rental of lands, realized gross sales of at least $2,500 for agricultural or horticultural products produced on the premises during the calendar year immediately preceding submission of a special permit application; and

(2) continues to own and operate the premises and meet that income threshold every year during the term of the permit.

"Heritage farm structure" means a building or structure that is significantly representative of New Jersey's agrarian history or culture and that has been designated as such by the committee exclusively for the purposes of sections 1 and 3 of P.L.2005, c.314 (C.4:1C-32.1 and C.4:1C-32.3).

"Heritage preservation easement" means an interest in land less than fee simple absolute, stated in the form of a deed restriction executed by or on behalf of the owner of the land, appropriate to preserving a building or structure that is significant for its value or importance to New Jersey's agrarian history or culture, and to be used exclusively for the purposes of implementing sections 1 and 3 of P.L.2005, c.314 (C.4:1C-32.1 and C.4:1C-32.3), to limit alteration in exterior form or features of such building or structure.

"Owner of the premises" means the person or entity who owns qualifying land.

"Qualifying land" means a farm on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization prior to January 12, 2006, the date of enactment of P.L.2005, c.314 (C.4:1C-32.1 et seq.), and in accordance with the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), and for which no portion of the farm was excluded from preservation in the deed of easement.

"Qualifying tax exempt nonprofit organization" means the same as that term is defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

"Rural microenterprise" means a small-scale business or activity that is fully compatible with agricultural use and production on the premises, does not, at any time, detract from, diminish, or interfere with the agricultural use of the premises, and is incidental to the agricultural use of the premises. "Rural microenterprise" shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of P.L.2005, c.314 (C.4:1C-32.2).

History: L. 2005, c. 314, § 1; amended 2015, c. 275, § 2.

§ 4:1C-32.2. Special permit to allow a personal wireless service facility on certain land; conditions; definitions

a. Any person who owns land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of

P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes may apply for a special permit pursuant to this section to allow a personal wireless service facility to be erected on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organization, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one personal wireless service facility only, although this paragraph shall not prohibit the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, from approving the sharing of the single permitted facility by more than one personal wireless service company, or the use of the facility for other compatible wireless communication uses deemed by the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, to not be violative of the intent or the goals, purposes, or requirements of this section;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the personal wireless service facility utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, or the construction of a new structure not to exceed 500 square feet in footprint area which is independent of any existing structure, provided that in either case the applicant demonstrates to the satisfaction of the committee that:

(a) the expansion or the new structure is necessary to the operation or functioning of the personal wireless service facility;

(b) for a new structure, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion; and

(c) the area of the proposed footprint of the expansion or the new structure is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

(8) the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(9) the personal wireless service facility does not interfere with the use of the land for agricultural production;

(10) the personal wireless service facility utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(11) the personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the personal wireless service facility.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit for a personal wireless service facility, shall also consider such additional factors as traffic generated and the number of employees required by the proposed personal wireless service facility so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service company whose proposed facility is the subject of a permit application pursuant to this section shall be required to obtain all applicable local zoning and land use approvals and any other applicable approvals that may be required by State or local law, rule, regulation, or ordinance even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise allow the proposed facility to be exempt from obtaining any such approvals.

f. As a condition of the issuance of a permit pursuant to this section, a personal wireless service facility shall agree to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, approved by the committee.

g. For the purposes of this section:

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3); and

"Personal wireless service facility" means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to federal law.

History: L. 2005, c. 314, § 2.

§ 4:1C-32.3. Application fee for special permit; suspension, revocation; report

a. The application fee for a special permit authorized pursuant to section 1 of P.L.2005, c.314 (C.4:1C-32.1) shall be $250. The application fee for a special permit authorized pursuant to section 2 of P.L.2005, c.314 (C.4:1C-32.2) shall be $1,000. All application fees shall be payable to the committee regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the committee pursuant to P.L.2005, c.314 (C.4:1C-32.1 et seq.) shall be utilized by the committee for farmland preservation purposes.

b. The committee may suspend or revoke a special permit issued pursuant to section 1 or 2 of P.L.2005, c.314 (C.4:1C-32.1 or C.4:1C-32.2) if the permittee violates any term or condition of the permit, or any provision of the applicable statutory section.

c. (1) In order to expedite the review and approval of routine applications for a special permit, which have been submitted pursuant to section 1 or 2 of P.L.2005, c.314 (C.4:1C-32.1 or C.4:1C-32.2), the committee may delegate to its executive director, by resolution, the authority to review and approve an application. The delegation of review and approval authority pursuant to this subsection shall be authorized by the committee only in those cases where (a) the committee has not received comments from the board or a qualifying nonprofit organization concerning the potential negative impacts of an application's approval, and (b) the application complies with all provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.) and the rules and regulations adopted pursuant thereto.

(2) An applicant whose application is denied by the executive director may appeal the decision to the committee.

(3) Nothing in this subsection shall preclude the executive director from bringing any application before the committee for review and approval, when such action is deemed by the executive director to be appropriate.

d. The committee may take action to deny an application for a special permit or to suspend or revoke a special permit issued pursuant to P.L.2005, c.314 (C.4:1C-32.1 et seq.). The applicant or permittee shall be afforded the opportunity for a hearing prior to the committee taking any such action.

e. Within two years after the date of enactment of P.L.2015, c.275, the committee shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as is necessary to implement and administer the provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c.275. These rules and regulations shall include, at a minimum, procedures and standards for the filing, evaluation, and approval of special permit applications, which procedures and standards shall seek to balance, as equally important concepts, the public interest in: (1) protecting farmland from further development as a means of preserving agriculture; (2) protecting heritage farm structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved; and (3) providing support to sustain and strengthen the agricultural industry in the State.

f. Every two years, the committee shall prepare a report on the implementation of P.L.2005, c.314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c.275. The report shall include a survey and inventory of:

(1) all rural microenterprise activities occurring, and all personal wireless service facilities placed, on preserved farmland in accordance with the provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.);

(2) the extent to which existing structures, such as barns, sheds, and silos, are used for the purposes identified in paragraph (1) of this subsection, and the manner in which those existing structures have been modified to serve those purposes;

(3) the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities, and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos;

(4) the extent to which heritage farm structures have been protected through the placement thereon of heritage preservation easements; and

(5) any other information the committee deems useful.

Any report prepared pursuant to this subsection shall be transmitted to the Governor, and, in accordance with the provisions of section 2 of P.L.1991, c.164 (C.52:14-19.1), to the President of the Senate and the Speaker of the General Assembly, as well as to the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment and Energy Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee, or their designated successors. Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted at a publicly-accessible location on the committee's Internet website.

History: L. 2005, c. 314, § 3; amended 2015, c. 275, § 3.

§ 4:1C-32.4. Certain generation facilities, structures, equipment permitted on preserved farmland

a. Notwithstanding any law, rule or regulation to the contrary, a person who owns preserved farmland may construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation, for the purpose of generating power or heat, and may make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the biomass, solar, or wind energy generation facilities, structures, and equipment:

(1) do not interfere significantly with the use of the land for agricultural or horticultural production, as determined by the committee;

(2) are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer of the biomass, solar, or wind energy generation facilities, structures, or

equipment by which the landowner uses the income or credits realized from the biomass, solar, or wind energy generation to purchase the facilities, structures, or equipment;

(3) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm; and

(4) are limited (a) in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to what is allowed under subsection b. of this section, or alternatively at the option of the landowner (b) to occupying no more than one percent of the area of the entire farm including both the preserved portion and any portion excluded from preservation.

The person who owns the farm and the energy generation facilities, structures, and equipment may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to paragraph (2) of this subsection.

b. The limit on the annual energy generation capacity established pursuant to subparagraph (a) of paragraph (4) of subsection a. of this section shall not include energy generated from facilities, structures, or equipment existing on the roofs of buildings or other structures on the farm as of the date of enactment of P.L.2009, c.213 (C.4:1C-32.4 et al.).

c. A landowner shall seek and obtain the approval of the committee before constructing, installing, and operating biomass, solar, or wind energy generation facilities, structures, and equipment on the farm as allowed pursuant to subsection a. of this section. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days within which to provide comments to the committee on the application. The committee shall, within 90 days of receipt, approve, disapprove, or approve with conditions an application submitted for the purposes of subsection a. of this section. The decision of the committee on the application shall be based solely upon the criteria listed in subsection a. of this section and comments received from the holder of the development easement.

d. No fee shall be charged of the landowner for review of an application submitted to, or issuance of a decision by, the committee pursuant to this section.

e. The committee may suspend or revoke an approval issued pursuant to this section for a violation of any term or condition of the approval or any provision of this section.

f. The committee, in consultation with the Department of Environmental Protection and the Department of Agriculture, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section, including provisions prescribing standards concerning impervious cover which may be permitted in connection with biomass, solar, or wind energy generation facilities, structures, and equipment authorized to be constructed, installed, and operated on lands pursuant to this section.

g. In the case of biomass energy generation facilities, structures, or equipment, the landowner shall also seek and obtain the approval of the Department of Agriculture as required pursuant to section 5 of P.L.2009, c.213 (C.4:1C-32.5) if the land is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

h. Notwithstanding any provision of this section to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c.111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c.111.

i. For the purposes of this section:

"Biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

"Net metering" means the same as that term is used for purposes of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87).

"Preserved farmland" means land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes.

History: L. 2009, c. 213, § 1.

§ 4:1C-32.5. Approval required

a. No person may construct, install, or operate biomass energy generation facilities, structures, or equipment on any land that is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), without the approval of the Department of Agriculture, in addition to any other approvals that may be required by law.

b. The Department of Agriculture, in consultation with the Department of Environmental Protection, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning: (1) the construction, installation, and operation of biomass energy generation facilities, structures, and equipment and the management of biomass fuel for such facilities, structures, and equipment on farms; and (2) the process by which a landowner may apply for the approval required pursuant to subsection a. of this section, including establishment of reasonable application fees, if necessary, to help pay for the cost of review of the application, except no application fee may be charged for preserved farmland as defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

c. Notwithstanding any provision of this section to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c.111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c.111.

d. For the purposes of this section, "biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, "biomass" means the same as that term is defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

History: L. 2009, c. 213, § 5.

§ 4:1C-32.6. Report to Governor, Legislature, committees

Every two years, the Department of Agriculture, in consultation with the State Agriculture Development Committee and the Department of the Treasury, shall prepare a report on the implementation of P.L.2009, c.213 (C.4:1C-32.4 et al.). The report shall include: a survey and inventory of all biomass, solar, or wind energy generation facilities, structures, and equipment placed on farmland in accordance with P.L.2009, c.213 (C.4:1C-32.4 et al.); the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected; and such other information as either of the departments or the committee deems useful.

The report prepared pursuant to this section shall be transmitted to the Governor, the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors. Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the website of the Department of Agriculture.

History: L. 2009, c. 213, § 6.

§ 4:1C-32.7. Definitions relative to special occasion events conducted at certain wineries

As used in P.L.2014, c.16 (C.4:1C-32.7 et seq.):

"Preserved farmland" means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, a county, a municipality, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes.

"Special occasion event" means a wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board, and conducted pursuant to the requirements set forth in subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8).

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

History: L. 2014, c. 16, § 1.

§ 4:1C-32.8. Pilot program permitting special occasion events

a. The State Agriculture Development Committee shall establish a pilot program permitting special occasion events to be conducted on preserved farmland at a winery provided that:

(1) the gross income generated by the winery from all special occasion events conducted for the calendar year together account for less than 50 percent of the annual gross income of the winery;

(2) the special occasion event uses the agricultural output of the winery, to the maximum extent practicable, to promote agricultural tourism and advance the agricultural or horticultural output of the winery;

(3) the special occasion event is conducted on a Friday, Saturday, Sunday, or federal or State holiday, except that a special occasion event may be conducted on any other day of the week with the approval of the State Agriculture Development Committee. The committee may delegate its authority in that regard to a county agriculture development board;

(4) the special occasion event is conducted in: (a) a temporary structure, such as an enclosed or open canopy or tent or other portable structure or facility, and any temporary structure would be put in place for only the minimum amount of time reasonably necessary to accommodate the special occasion event; (b) an existing permanent agricultural building; (c) a farm or open air pavilion; or (d) another structure used in the normal course of winery operations and activities;

(5) the special occasion event complies with applicable municipal ordinances, resolutions, or regulations concerning litter, solid waste, and traffic and the protection of public health and safety;

(6) the winery shall be subject to a site plan review and any applicable development approvals as may be required under an ordinance adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

(7) the special occasion event is subject to the noise standards set forth pursuant to the "Noise Control Act," P.L.1971, c.418 (C.13:1G-1 et seq.), and the rules and regulations adopted thereto;

(8) the special occasion event complies with any applicable municipal ordinance that restricts performing or playing music inside the winery's buildings and structures;

(9) the special occasion event ends at a specific time, if required pursuant to a curfew established by a municipal ordinance;

(10) the special occasion event would not knowingly result in a significant and direct negative impact to any property adjacent to the winery; and

(11) the winery hosting a special occasion event enforces State and federal requirements concerning the legal drinking age.

b. In determining the annual gross income of a winery pursuant to this section, the gross income received from any special occasion event shall include, but need not be limited to, admission fees; rental fees; setup, breakdown, and cleaning fees; and all other revenue that is not directly related to the agricultural output of the winery but is received by the winery in conjunction with conducting a special occasion event.

History: L. 2014, c. 16, § 2.

§ 4:1C-32.9. Audit to determine compliance; certification of annual gross income

a. (1) A county agriculture development board or the State Agriculture Development Committee may order, and specify the scope of, an audit of the owner or operator of any winery engaged in conducting special occasion events on preserved farmland, for the purpose of determining compliance with section 2 of P.L.2014, c.16 (C.4:1C-32.8). The audit shall be conducted by an independent certified public accountant approved by the board or the committee, and the reasonable costs thereof shall be paid by the owner or operator of the winery. A county agriculture development board, or the committee, may establish a list of independent certified public accountants approved for the purposes of conducting an audit pursuant to this paragraph. Copies of the audit shall be submitted to the board and the committee.

(2) An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall not be subject to an audit authorized pursuant to this section more than once per year without good cause demonstrated by the applicable board or the committee.

b. An owner or operator of a winery engaged in conducting special occasion events on preserved farmland shall annually certify to the county agriculture development board that the special occasion events together account for less than 50 percent of the annual gross income of the winery during the prior calendar year, pursuant to paragraph (1) of subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8). The board shall forward the certification of annual gross income to the committee.

c. In conjunction with an audit ordered pursuant to subsection a. of this section, a board or the committee may request, and the winery shall then submit, additional documentation as may be necessary for the board or committee to verify compliance with paragraph (1) of subsection a. of section 2 of P.L.2014, c.16 (C.4:1C-32.8).

History: L. 2014, c. 16, § 3.

§ 4:1C-32.10. Violations, penalties

a. An owner or operator of a winery who violates P.L.2014, c.16 (C.4:1C-32.7 et seq.) shall be liable to a civil penalty of up to $1,000 for the first offense, up to $2,000 for the second offense, or up to $3,000 for a subsequent offense, to be collected in a civil action commenced by the State Agriculture Development Committee.

b. In addition to the penalties established pursuant to subsection a. of this section:

(1) for a second offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of up to six months;

(2) for a third offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least six months but not more than one year; and

(3) for a fourth or subsequent offense, the committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least one year but not more than two years.

c. Any penalty imposed pursuant to this section may be collected, with costs, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.2014, c.16 (C.4:1C-32.7 et seq.).

History: L. 2014, c. 16, § 4.

§ 4:1C-32.11. Rules, regulations

a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary for the implementation of P.L.2014, c.16 (C.4:1C-32.7 et seq.).

b. The committee may adopt, as may be necessary and appropriate, agricultural management practices for the implementation of P.L.2014, c.16 (C.4:1C-32.7 et seq.).

History: L. 2014, c. 16, § 5.

§ 4:1C-32.12. Certain provisions remain effective

Notwithstanding the provisions of section 6 of P.L.2014, c.16 to the contrary, sections 1 through 5 of P.L.2014, c.16 (C.4:1C-32.7 through C.4:1C-32.11) shall be and remain in effect for two years following the effective date of this act, and shall be retroactive to March 1, 2018.

History: L. 2018, c. 30, § 1.

§ 4:1C-32.13. Reports relative to pilot program

a. Each county agriculture development board shall prepare and submit to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), an annual report. Each annual report shall include findings that summarize the activities of wineries on preserved farmland in the county of the board's jurisdiction and make recommendations for the pilot program established pursuant to P.L.2014, c.16 (C.4:1C-32.7 et seq.).

b. The State Agriculture Development Committee shall prepare and submit to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1):

(1) an interim report, within 30 days after the effective date of this act; and

(2) a final report, at least 45 days before the expiration of the pilot program established pursuant to P.L.2014, c.16 (C.4:1C-32.7 et seq.) and extended pursuant to this act.

c. The interim and final reports required pursuant to subsection b. of this section shall review the implementation and operation of the pilot program established pursuant to P.L.2014, c.16 (C.4:1C-32.7 et seq.), summarize the findings and recommendations of the annual reports prepared pursuant to subsection a. of this section, and make recommendations to the Governor and Legislature to amend, extend, or make permanent the program.

History: L. 2018, c. 30, § 2.

§ 4:1C-32.14. Inapplicability of pilot program

a. Notwithstanding any other law, or rule or regulation adopted pursuant thereto, to the contrary, the pilot program established pursuant to P.L.2014, c.16 (C.4:1C-32.7 et seq.) and extended pursuant to this act [C.4:1C-32.12 et seq.] shall not apply to any special occasion event at a winery that is not on preserved farmland.

b. The State Agriculture Development Committee shall not have any authority to regulate or restrict any special occasion event conducted at a winery beyond the scope of the authority granted pursuant to P.L.2014, c.16 (C.4:1C-32.7 et seq.).

History: L. 2018, c. 30, § 3.

§ 4:1C-33. Enforcement of conditions or restrictions

The committee or the board is authorized to institute, in the name of the State, any proceedings intended to enforce the conditions or restrictions on the use and development of land on which a development easement has been purchased pursuant to this act.

History: L. 1983, c. 32, § 26, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-34. Persons acquiring developmental easement; sale to board

Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board, provided that the land on which the development easement was acquired shall be subject to the conditions and provisions of this act and that the board and the committee make a determination to purchase the development easement in the manner prescribed in section 24 of this act.

History: L. 1983, c. 32, § 27, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-35. Appraisal of value of donation

If a person wishes to donate all or a portion of the value of the development easement to the board, the value of the donation shall be appraised pursuant to the provisions of section 24 of this act. This requirement shall apply only if the board is requesting State funds. In order to qualify for State funds, pursuant to the provisions of this act, the county shall make up the difference between its required share of the total appraised value of the easement and the appraised value of the donation. In the event the value of the donation exceeds the required county share, the amount in excess shall be deducted from the State share.

History: L. 1983, c. 32, § 28; amended 1988, c. 4, § 4.

§ 4:1C-36. Pinelands area, Highlands Region, farmland preservation

Nothing herein contained shall be construed to prohibit the creation of a municipally approved program or other farmland preservation program, the purchase of development easements, or the extension of any other benefit herein provided on land, and to owners thereof, in the Pinelands area, as defined pursuant to section 3 of P.L. 1979, c. 111 (C. 13:18A-3), or in the Highlands Region, as defined in section 3 of P.L. 2004, c. 120 (C. 13:20-3).

History: L. 1983, c. 32, § 29; amended 2004, c. 120, § 45.

§ 4:1C-37. Joint legislative oversight committee; duties

The Senate Natural Resources and Agriculture Committee and the Assembly Agriculture and Environment Committee are designated as the Joint Legislative Oversight Committee on Agricultural Retention and Development. The duties and responsibilities of the joint oversight committee shall be as follows:

a. To monitor the operation of the committee and its efforts to retain farmland in productive agricultural use and to recommend to the committee any rule, regulation, guideline, or revision thereto which it deems necessary to effectuate the purposes and provisions of this act;

b. To review and evaluate the implementation of development easement purchases on agricultural land;

c. To review and evaluate all relevant existing and proposed statutes, rules, regulations and ordinances, so as to determine their individual effect upon the conduct of agricultural activities in this State; and

d. To recommend to the Legislature any legislation which it deems necessary in order to effectuate the purposes of this act.

History: L. 1983, c. 32, § 30, eff. Jan. 26, 1983, operative Jan. 26, 1983.

§ 4:1C-37.1. Acquisition of property for farmland preservation purposes.

A county, county agriculture development board, or municipality may acquire real property in fee simple for farmland preservation purposes, which property may be resold or leased by the county, county agriculture development board, or municipality with an agricultural deed restriction placed on the property by the county, county agriculture development board, or municipality.

History: L. 2009, c. 147, § 2.

§ 4:1C-38. Acquisition of land in name of State

In addition to those powers and duties provided for by section 5 of P.L.1983, c.31 (C.4:1C-6) and by sections 5 and 6 of P.L.1983, c.32 (C.4:1C-5 and C.4:1C-7), the State Agriculture Development Committee also shall have the power to purchase and acquire, in the name of the State, fee simple absolute interest in land in accordance with section 2 of P.L.1989, c.28 (C.4:1C-39).

History: L. 1989, c. 28, § 1; amended 1989, c. 310, § 6.

§ 4:1C-39. Sale of fee simple absolute interest in land; notice

a. A landowner who wishes to sell a fee simple absolute interest in land that becomes enrolled after the effective date of P.L.1989, c.28 (C.4:1C-38 et al.) in a municipally approved program or other farmland preservation program established pursuant to sections 14 and 13 of P.L.1983, c.32 (C.4:1C-21 and 4:1C-20), respectively, shall give to the committee written notice, by certified mail, that a contract of sale has been executed for the property. The notice shall set forth the terms and conditions of the executed contract of sale and shall have attached a copy of that contract. The notice of executed contract of sale shall also include any other information that the committee may reasonably require by regulation. The committee shall have the first right and option to purchase the land upon substantially similar terms and conditions, which right and option shall be exercisable as provided by this section. If the committee chooses to exercise the first right and option, the committee shall give notice of that intent to the landowner within a period of 30 days following the date of receipt of the notice of executed contract of sale. The committee shall submit its offer to match the terms and conditions of the executed contract of sale to the landowner within the 60 days following the expiration of the 30-day period. If no notice is given within the 30-day period that the committee intends to exercise the first right and option, or if no offer is submitted to the landowner within the 60-day period following the 30-day period, the owner may at the expiration of the 30-day period or the 60-day period, as the case may be, convey the land to the proposed purchaser named in the executed contract of sale upon the terms and conditions specified therein, or to the proposed purchaser's assignee as provided in that executed contract of sale. If the owner fails to convey the land to the named proposed purchaser or an assignee thereof pursuant to the executed contract of sale, the land shall again become subject to the committee's first right and option to purchase as provided by this section. A landowner may elect to convey the land to the committee upon the exercise of the committee's first right and option to purchase without breaching the original contract of sale, notwithstanding that the committee's offer is different than, or provides for lower consideration than, that in the original executed contract of sale.

b. The provisions of this section shall apply to any sale of a fee simple absolute interest in land that becomes enrolled in a municipally approved program or other farmland preservation program subsequent to the effective date of P.L.1989, c.28 (C.4:1C-38 et al.), except that any person enrolled in a municipally approved program or other farmland preservation program prior to the effective date of P.L.1989, c.28 (C.4:1C-38 et al.) may agree to provide this first right and option to purchase in a manner consistent with this section.

c. The provisions of subsection a. of this section shall apply to the sale of a fee simple absolute interest in land from which a development easement of limited term has been conveyed pursuant to paragraph (2) of subsection a. of section 17 of P.L.1983, c.32 (C.4:1C-24) during the term of that development easement and for one year thereafter.

History: L. 1989, c. 28, § 2; amended 1989, c. 310, § 7.

§ 4:1C-40. Certificate acknowledging landowner compliance

A certificate executed and acknowledged by the committee stating that the provisions of section 2 of P.L.1989, c.28 (C.4:1C-39) have been met by the landowner, and that the first right and option to purchase of the committee has terminated, shall be conclusive upon the committee and the owner in favor of all persons who rely thereon in good faith, and this certificate shall be furnished to any landowner who has complied with the provisions of section 2 of P.L.1989, c.28 (C.4:1C-39).

History: L. 1989, c. 28, § 3; amended 1989, c. 310, § 8.

§ 4:1C-41. Priority

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

History: L. 1989, c. 28, § 4.

§ 4:1C-42. Acquired land held in name of State; sale, conditions

Any land acquired by the committee pursuant to the terms of P.L.1989, c.28 (C.4:1C-38 et al.) shall be held of record in the name of the State and shall be offered for sale by the committee with a deed restriction permanently prohibiting nonagricultural development. Land sold with a deed restriction permanently prohibiting nonagricultural development pursuant to this section is exempt from the provisions of section 2 of P.L.1989, c.28 (C.4:1C-39).

History: L. 1989, c. 28, § 5; amended 1989, c. 310, § 9.

§ 4:1C-43. Appropriation

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

History: L. 1989, c. 28, § 6.

§ 4:1C-43.1. Farmland preservation planning incentive grant program

a. There is established in the State Agriculture Development Committee a farmland preservation planning incentive grant program, the purpose of which shall be to provide grants to eligible counties and municipalities for farmland preservation purposes as authorized pursuant to this act.

b. To be eligible to apply for a grant, a county or municipality shall:

(1) Identify project areas of multiple farms that are reasonably contiguous and located in an agriculture development area authorized pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.);

(2) Establish an agricultural advisory committee. In the case of a county, the county agriculture development board shall serve this function. In the case of a municipality, members of a municipal agricultural advisory committee shall be appointed by the mayor with the consent of the municipal governing body, and the committee shall report to the municipal planning board. A municipal agricultural advisory committee shall be composed of at least three, but not more than five, members who shall be residents of the municipality, with a majority of the members actively engaged in farming and owning a portion of the land they farm. For the purposes of this paragraph, "mayor" shall mean the same as that term is defined pursuant to section 3.2 of P.L.1975, c.291 (C.40:55D-5);

(3) Establish and maintain a dedicated source of funding for farmland preservation pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.), or an alternative means of funding for farmland preservation, such as, but not limited to, repeated annual appropriations or repeated issuance of bonded indebtedness, which the State Agriculture Development Committee deems to be, in effect, a dedicated source of funding because of a demonstrated commitment on the part of the county or municipality; and

(4) In the case of a municipality, prepare a farmland preservation plan element pursuant to paragraph (13) of section 19 of P.L.1975, c.291 (C.40:55D-28) in consultation with the agriculture advisory committee established pursuant to paragraph (2) of this subsection.

c. In the event a municipality is seeking funding from the county toward the purchase of development easements, the municipality shall submit an application to the county agriculture development board. In all other cases, a municipality shall submit its application directly to the State Agriculture Development Committee.

d. A municipality, in submitting an application to the county agriculture development board or the State Agriculture Development Committee as appropriate, or a county, in submitting an application to the State Agriculture Development Committee, shall outline a multi-year plan for the purchase of multiple farms in a project area and indicate its annual share of the estimated purchase price. The municipality, in order to enhance its application, may submit its proposal jointly with one or more contiguous municipalities if the submission would result in the preservation of a significant area of reasonably contiguous farmland. The application shall include, in the case of a municipality, a copy of the farmland preservation plan element prepared pursuant to paragraph (13) of section 19 of P.L.1975, c.291 (C.40:55D-28); an estimate of the cost of purchasing development easements on all of the farms in a designated project area, to be determined in consultation with the county agriculture development board or through an appraisal for the entire project area; and an inventory showing the characteristics of each farm in the project area which may include, but need not be limited to, size, soils and agricultural use.

e. The State Agriculture Development Committee shall make decisions regarding suitability for funding of development easement purchases for planning incentive grants based on whether the project area provides an opportunity to preserve a significant area of reasonably contiguous farmland that will promote the long term viability of agriculture as an industry in the municipality or county. After the State Agriculture Development Committee has given approval to an application, the municipality or county shall submit two appraisals for each parcel for which funding is requested. The appraisals shall be conducted pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31). Approved funding shall be allocated by the municipality, the county and the State to each parcel in the project area under an agreement that commits each level of government to a specific payment in each of the years included in the plan for purchase. Nothing in this act shall be construed to require that any parcel in a project area receive a price per acre that is the same as any other parcel in that project area or that any parcel must be purchased with installment payments because other parcels in the project area are so purchased.

f. Purchases of development easements on farmland pursuant to this act shall be made with the approval of the State Agriculture Development Committee and the municipality, and in the event county funds are provided, with the approval of the county agriculture development board.

g. If a county does not provide funding toward the purchase of the development easement, the State Agriculture Development Committee shall hold title to the development easement.

h. The State Agriculture Development Committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement this act, and shall establish ranking and funding criteria separately from, but similar to, those used in the program established pursuant to P.L.1983, c.32 (C.4:1C-11 et seq.), except that ranking and funding criteria shall be applied to the project area as a whole and not to individual parcels and priority shall be given to those applications that utilize option agreements, installment purchases, donations, and other methods for the purpose of leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et al.).

History: L. 1999, c. 180, § 1.

§ 4:1C-44. Findings, declaration

The Legislature finds that development in the State has reduced the number of acres in agricultural use by 90,000 acres during the last two years; that the depletion of agricultural land has forced the closure of agricultural support services, thus putting an additional burden on the farmers in the State; and that there is a need for leasable farmland to allow those farmers who do not own land to continue to farm. The Legislature further finds that the State owns over 5,600 parcels of property consisting of approximately 480,000 acres, but that it does not know which of these lands may be suitable for agricultural production. The Legislature therefore declares that putting otherwise dormant land to productive agricultural use would serve the best interest of all citizens of this State by insuring the numerous social, economic, and environmental benefits which accrue from agricultural production.

History: L. 1989, c. 79, § 1.

§ 4:1C-45. Inventory of land suitable for agricultural production

Within one year of the effective date of this act, the Department of Agriculture, in cooperation with the Department of the Treasury and other State agencies, shall prepare an inventory of properties owned by the State of New Jersey suitable for agricultural production not currently being farmed by a State agency and available for leasing to private sector farm operators. Land shall be deemed suitable for agricultural production if:

a. The acreage of the parcel of property economically would support or is adjacent or proximate to other State-owned or private sector agricultural land the combined acreage of which would, in the opinion of the applicable County Agriculture Development Board or the State Agriculture Development Committee, in counties where there is no county board, economically support an agricultural enterprise;

b. The soil is of sufficient quality to support agricultural production as determined by the applicable Soil Conservation District;

c. The land does not provide habitat for rare or endangered species as determined by the Department of Environmental Protection pursuant to law; and

d. A determination is made by the respective State agency that the land is no longer needed or being used by the State for non-agricultural purposes, and the agricultural production of that land would pose no significant environmental harm to persons working or living on or near that land.

History: L. 1989, c. 79, § 2.

§ 4:1C-46. Priority

Land deemed suitable for agricultural production shall be offered for agricultural production in the following priority:

a. For use by the Department of Corrections or other State agencies conducting farm operations;

b. For lease to private sector farm operators, on the basis of a competitive bid, pursuant to the provisions of section 5 of this act.

History: L. 1989, c. 79, § 3.

§ 4:1C-47. Rules, regulations

The Department of Agriculture shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a procedure for the application and awarding of leases under this act. The terms of the lease shall be established by the department so as to be the most advantageous to the State. The lease shall require the lessee to apply soil conservation techniques to maintain the soil quality of the leased land and to use acceptable agricultural management practices that have been approved by the State Agriculture Development Committee.

History: L. 1989, c. 79, § 4.

§ 4:1C-48. Competitive bid; covenant

Lands deemed suitable for agricultural production pursuant to this act and deemed by the State House Commission to be surplus to the needs of the State and any of its agencies, shall be offered for sale for agricultural use, in fee simple, to private sector purchasers on the basis of a competitive bid. Any conveyance by the State shall include a covenant that the land may be used only for agricultural production, that the covenant shall run with the land in perpetuity, that the severed development rights shall be held by the local County Agriculture Development Board or the State Agriculture Development Committee, and that the board or committee shall monitor and enforce the covenant.

History: L. 1989, c. 79, § 5.

§ 4:1C-49. Short title

This act shall be known and may be cited as the "**State Transfer of Development Rights Bank Act**."

History: L. 1993, c. 339, § 1.

§ 4:1C-50. Definitions

As used in this act:

"Board" means the board of directors of the State Transfer of Development Rights Bank established pursuant to section 3 of P.L. 1993, c. 339 (C. 4:1C-51);

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

"Development transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance adopted pursuant to law;

"Instrument" means the easement, credit, or other deed restriction used to record a development transfer; and

"State Transfer of Development Rights Bank," "bank" or "State TDR Bank" means the bank established pursuant to section 3 of P.L. 1993, c. 339 (C. 4:1C-51).

History: L. 1993, c. 339, § 2; amended 2004, c. 2, § 29.

§ 4:1C-51. State Transfer of Development Rights Bank established

a. There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Transfer of Development Rights Bank. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated within the office of the State Agriculture Development Committee within the Department of Agriculture, but notwithstanding that allocation, the bank shall be independent of any supervision or control by the committee or the department or by any officer or employee thereof, except as otherwise expressly provided in this act. The bank is constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the bank of the powers conferred by this act is deemed to be an essential governmental function of the State.

b. (1) The bank shall be governed by a board of directors consisting of ten voting members, or the designees thereof, as follows: the Secretary of Agriculture, who shall serve as chairperson and who shall vote only in the event there is a tie vote; the State Treasurer; the Commissioner of Environmental Protection; the Commissioner of Transportation; the Commissioner of Banking; the Commissioner of Community Affairs; the President of the State Board of Agriculture; the Chairman of the State Planning Commission; the President of the Association of New Jersey Environmental Commissions; and one member of the general public, who shall be a farmer actively engaged in agriculture in New Jersey and who shall be appointed by the Governor, with the advice and consent of the Senate.

(2) All members of the board, except the member of the general public, shall serve ex officio. The term of the member of the general public shall be for four years, with reappointment possible for a second term only.

(3) A majority of the membership of the board shall constitute a quorum except that no action may be taken by the board except upon the affirmative vote of a majority of the total membership of the board. Designees of the nine ex officio members shall have the power to vote in the absence of members.

c. (1) Upon request of the board, the State Agriculture Development Committee shall provide that appropriate staff be made available to assist and advise the board in performing its functions, duties, and responsibilities pursuant to this act.

(2) Officials of State agencies serving on the board shall, to the maximum extent practicable and without remuneration from the board, avail the board of the expertise of their agencies in the areas of land use and planning, banking, law, agriculture, natural resource protection, historic site preservation, and other areas of expertise required by the board to adequately address the broader public and planning purposes of transfer of development rights and of the State Transfer of Development Rights Bank.

(3) Funding necessary to provide the board with direct staff assistance or professional services that cannot be made available through existing State agency staff as provided in this subsection shall be made available as provided for pursuant to section 8 of this act.

History: L. 1993, c. 339, § 3.

§ 4:1C-52. Powers of board

The board shall have the following powers:

a. To purchase, or to provide matching funds for the purchase of 80% of, the value of development potential and to otherwise facilitate development transfers, from the owner of record of the property from which the development potential is to be transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer; provided that, in the case of providing matching funds for the purchase of 80% of the value of development potential, the remaining 20% of that value is contributed by the affected municipality or county, or both, after public notice thereof in the New Jersey Register and in one newspaper of general circulation in the area affected by the purchase. The remaining 20% of the value of the development potential to be contributed by the affected municipality or county, or both, to match funds provided by the board, may be obtained by purchase from, or donation by, the owner of record of the property from which the development potential is to be transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer. The value of development potential may be determined by either appraisal, municipal averaging based upon appraisal data, or by a formula supported by appraisal data. The board may also engage in development transfer by sale, exchange, or other method of conveyance, provided that in doing so, the board shall not substantially impair the private sale, exchange or other method of conveyance of development potential. The board may not, nor shall anything in this act be construed as permitting the board to, engage in development transfer from one municipality to another, which transfer is not in accordance with the ordinances of both municipalities;

b. To adopt and, from time to time, amend or repeal suitable bylaws for the management of its affairs;

c. To adopt and use an official seal and alter that seal at its pleasure;

d. To apply for, receive, and accept, from any federal, State, or other public or private source, grants or loans for, or in aid of, the board's authorized purposes;

e. To enter into any agreement or contract, execute any legal document, and perform any act or thing necessary, convenient, or desirable for the purposes of the board or to carry out any power expressly given in this act;

f. To adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;

g. To call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, commission, or agency as may be required and made available for these purposes;

h. To retain such staff as may be necessary in the career service and to appoint an executive director thereof. The executive director shall serve as a member of the senior executive or unclassified service and may be appointed without regard to the provisions of Title 11A of the New Jersey Statutes;

i. To review and analyze innovative techniques that may be employed to maximize the total acreage reserved through the use of perpetual easements;

j. To provide, through the State TDR Bank, a financial guarantee with respect to any loan to be extended to any person that is secured using development potential as collateral for the loan. Financial guarantees provided under this act shall be in accordance with procedures, terms and conditions, and requirements, including rights and obligations of the parties in the event of default on any loan secured in whole or in part using development potential as collateral, to be established by rule or regulation adopted by the board pursuant to the "Administrative Procedure Act";

k. To enter into agreement with the State Agriculture Development Committee for the purpose of acquiring development potential through the acquisition of development easements on farmland so that the board may utilize the existing processes, procedures, and capabilities of the State Agriculture Development Committee as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act;

l. To enter into agreements with other State agencies or entities providing services and programs authorized by law so that the board may utilize the existing processes, procedures, and capabilities of those other agencies or entities as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act;

m. To provide planning assistance grants to municipalities for up to 50% of the cost of preparing, for development potential transfer purposes, a utility service plan element or a development transfer plan element of a master plan pursuant to section 19 of P.L. 1975, c. 291 (C. 40:55D-28), a real estate market analysis required pursuant to section 12 of P.L. 2004, c. 2 (C. 40:55D-148), and a capital improvement program pursuant to section 20 of P.L. 1975, c. 291 (C. 40:55D-29) and incurred by a municipality, or $40,000, whichever is less, which grants shall be made utilizing moneys deposited into the bank pursuant to section 8 of P.L. 1993, c. 339 , as amended by section 31 of P.L. 2004, c. 2;

n. To provide funding in the form of grants or loans for the purchase of development potential to development transfer banks established by a municipality or county pursuant to P.L. 1989, c. 86 (C. 40:55D-113 et seq.) or section 22 of P.L. 2004, c. 2 (C. 40:55D-158);

o. To serve as a development transfer bank designated by the governing body of a municipality or county pursuant to section 22 of P.L. 2004, c. 2 (C. 40:55D-158);

p. To provide funding to (1) any development transfer bank that may be established by the Highlands Water Protection and Planning Council pursuant to section 13 of P.L. 2004, c. 120 (C. 13:20-13), for the purchase of development potential by the Highlands development transfer bank, and (2) the council to provide planning assistance grants to municipalities in the Highlands Region that are participating in a transfer of development rights program implemented by the council pursuant to section 13 of P.L. 2004, c. 120 (C. 13:20-13) in such amounts as the council deems appropriate to the municipalities notwithstanding any provision of subsection m. of this section or of section 8 of P.L. 1993, c. 339, as amended by section 31 of P.L. 2004, c. 2, to the contrary; and

q. To serve as a development transfer bank for the Highlands Region if requested to do so by the Highlands Water Protection and Planning Council pursuant to section 13 of P.L. 2004, c. 120 (C. 13:20-13).

History: Amended 2004, c. 2, § 30 (Section 8 of 1993, c.339 amended 2004, c.2, s.31); 2004, c. 120, § 46.

§ 4:1C-53. Establishment, maintenance of Development Potential Transfer Registry

a. The board shall establish and maintain a Development Potential Transfer Registry, which shall include:

(1) The name and address of every person to whom and from whom development potential is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefor;

(2) The name and address of any person who has utilized development potential, the location of the land to which and from which the development potential was transferred, and the date this transfer was made; and

(3) An annual enumeration of the total number of development transfers, listing the municipality or municipalities involved in the transfer and the instrument of transfer.

b. No person shall purchase or otherwise acquire, encumber, or utilize any development potential without recording that fact, within 10 business days thereof, with the bank.

c. The board shall make available (1) in the form of an annual report the information included in the registry to the county and each municipality that has adopted a development transfer ordinance, and (2) upon request, pertinent information to any other person. The first annual report shall be submitted to the Governor and Legislature and shall be made available to the public on the first anniversary of the effective date of this act.

History: L. 1993, c. 339, § 5.

§ 4:1C-54. Sale, exchange, conveyance of development potential

a. The board may sell by negotiation or auction, exchange, or otherwise convey any development potential that is purchased or otherwise acquired pursuant to the provisions of this act, after notice thereof placed in the New Jersey Register and in one newspaper of general circulation in the area affected by the conveyance. All sales, exchanges, or conveyances shall be made prior to the expiration of the bank. The provisions of any other law to the contrary notwithstanding, no such sale, exchange, or conveyance shall be subject to approval of the State House Commission or the General Services Administration in the Department of the Treasury.

b. When the board sells, exchanges, or otherwise conveys development potential, it shall remit 20% of the proceeds to the local government unit that participated in its acquisition unless the local government unit obtained its interest in the development potential by donation and retain the remaining balance.

c. When the board sells, exchanges, otherwise conveys, purchases or otherwise acquires development potential, it shall do so in a manner that shall not substantially impair the private sale and transfer thereof. The board may convey development potential without remuneration for use in projects that satisfy a compelling public purpose only by an affirmative vote of two-thirds of its members and approval by the local government unit that provided 20% of the cost of the acquisition of the development potential.

d. Governmental entities that provide municipal or county funding to finance the purchase of development potential prior to the operation of the State TDR Bank shall receive priority consideration by the State TDR Bank in the purchase of development potential.

e. Prior to the sale, exchange or conveyance of any development potential purchased or otherwise acquired using moneys derived from bonds authorized by the “Farmland Preservation Bond Act of 1981,” P.L.1981, c.276, as amended by P.L.1987, c.240 or the “Open Space Preservation Bond Act of 1989,” P.L.1989 c.183, the State TDR Bank shall obtain a determination from the State Treasurer that such sale, exchange or conveyance will not adversely affect the tax-exempt status of such bonds.

History: L. 1993, c. 339, § 6.

§ 4:1C-55. Report to Governor, Legislature

The board, three years after the effective date of this act, shall prepare and submit a report to the Governor and Legislature assessing the implementation of this act, evaluating the operation of the State TDR Bank, providing a financial accounting and summary of any expenditures or disbursements made pursuant to this act, and making any recommendations for appropriate legislative or administrative action necessary to further the purposes of this act.

History: L. 1993, c. 339, § 7.

https://lis.njleg.state.nj.us/nxt/gateway.dll/statutes/1/4438/4534?f=templates&fn=default.htm&vid=Publish:10.1048/Enu

Title 13. Conservation and Development——Parks and Reservations (Chs. 1 — 20)

Chapter 8C. Garden State Preservation Trust (§§ 13:8C-1 — 13:8C-60)

§ 13:8C-31. Use of lands acquired, developed by State using dedicated money

Lands acquired or developed by the State for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part shall not be conveyed, disposed of, or diverted to use for other than recreation and conservation purposes without the approval of the commissioner and the State House Commission established pursuant to R.S.52:20-1 et seq. Approval shall not be given unless the commissioner shall agree to pay an amount equal to or greater than the fair market value of the land at the time of the proposed conveyance, disposal, or diversion, as determined by the State House Commission, into the Garden State Green Acres Preservation Trust Fund; and the amount to be paid shall be determined also in accordance with the requirements of P.L.1993, c.38 (C.13:1D-51 et seq.). Moneys so returned to that fund shall be deemed wholly a part of the portion of that fund available for the acquisition by the State of lands for recreation and conservation purposes as provided pursuant to this act.

History: L. 1999, c. 152, § 31.

§ 13:8C-32. Use of lands acquired, developed by local government unit, tax exempt nonprofit organization using dedicated money; exceptions

a. Lands acquired or developed by a local government unit or a qualifying tax exempt nonprofit organization for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part shall not be conveyed, disposed of, or diverted to a use for other than recreation and conservation purposes without the approval of the commissioner and the State House Commission and following a public hearing held at least one month prior to those approvals. Approval of the commissioner and the State House Commission shall not be given unless the local government unit or qualifying tax exempt nonprofit organization agrees to (1) replace the lands with lands of equal or greater fair market value and of reasonably equivalent size, quality, location, and usefulness for recreation and conservation purposes, as approved by the commissioner, or (2) pay an amount equal to or greater than the fair market value of the lands, as determined by the commission, into the Garden State Green Acres Preservation Trust Fund. Moneys so returned to that fund shall be deemed wholly a part of the portion of that fund available for grants or loans to local government units or grants to qualifying tax exempt nonprofit organizations for the acquisition of lands for recreation and conservation purposes as provided pursuant to this act.

b. (1) A local government unit that receives a grant or loan for recreation and conservation purposes pursuant to this act shall not convey, dispose of, or divert to a use for other than recreation and conservation purposes any lands held by the local government unit for those purposes at the time of receipt of the grant or loan without the approval of the commissioner and the State House Commission and following a public hearing held by the local government unit at least one month prior to those approvals. Approval of the commissioner and the State House Commission shall not be given unless the local government unit agrees to (a) replace the lands with lands of equal or greater fair market value and of reasonably equivalent size, quality, location, and usefulness for recreation and conservation purposes, as approved by the commissioner, or (b) pay an amount equal to or greater than the fair market value of the lands, as determined by the commission, into the Garden State Green Acres Preservation Trust Fund. Moneys so returned to that fund shall be deemed wholly a part of the portion of that fund available for grants or loans to local government units for the acquisition of lands for recreation and conservation purposes as provided pursuant to this act.

(2) (a) Except as provided pursuant to subparagraph (b) of this paragraph, paragraph (1) of this subsection shall not apply to lands included in a redevelopment plan adopted pursuant to section 7 of P.L. 1992, c. 79 (C.40A:12A-7) that are being, or which have been, used for recreation and conservation purposes pending implementation of the redevelopment plan and the eventual use of those lands for other purposes in accordance with the redevelopment plan. Such lands, because of their use for recreation and

conservation purposes, shall not be deemed to be part of any inventory of lands prepared for the purposes of administering or enforcing this section. The exception provided by this subparagraph shall apply only to lands not acquired or developed for recreation or conservation purposes with financial assistance in whole or in part provided by the State, the federal Land and Water Conservation Fund, 16 U.S.C. s.460l-4 et al., the federal "Urban Park and Recreation Recovery Act of 1978," 16 U.S.C. s.2501 et seq., or a county or local open space trust fund created pursuant to P.L. 1997, c. 24 (C.40:12-15.1 et seq.).

(b) A municipality may adopt an ordinance specifically including the lands described in subparagraph (a) of this paragraph as part of any inventory of lands prepared for the purposes of administering or enforcing this section, in which case paragraph (1) of this subsection shall apply to those lands thereby included in the inventory. Any such ordinance shall cite to this subparagraph as authority for the ordinance.

(c) This paragraph shall apply only to redevelopment plans adopted pursuant to section 7 of P.L. 1992, c. 79 (C.40A:12A-7) prior to July 18, 2002.

c. For the purposes of this section, "fair market value" shall mean the fair market value at the time of the proposed conveyance, disposal, or diversion.

History: L. 1999, c. 152, § 32; amended 2002, c. 124, § 2.

§ 13:8C-33. Permissible actions by local government unit for other lands

a. For lands held by a local government unit for recreation and conservation purposes that were neither acquired nor developed for any of those purposes with any financial assistance from the State, and which have been included in an inventory of lands prepared for the purposes of complying with section 32 of this act, the local government unit may (1) change the recreation and conservation purpose for which the lands are being used to another recreation and conservation purpose, including but not limited to developing the lands for public outdoor recreation, or (2) construct a building or other structure on the lands for public indoor recreation, provided that the local government unit has held at least one public hearing on the proposed change in purpose or use at least 90 days prior to final approval thereof by the local government unit. Any action taken by a local government unit pursuant to this section shall not be deemed to be a conveyance, disposal, or diversion for the purposes of subsection b. of section 32 of this act.

b. The local government unit shall provide to the commissioner (1) at least 30 days' advance written notice of any public hearing to be held on any such change in purpose or use, (2) within 90 days after final approval of the change in purpose or use by the local government unit, written proof that any such public hearing was held, and (3) written notice of the change in purpose or use within 90 days after it has been effected.

History: L. 1999, c. 152, § 33.

§ 13:8C-34. Conveyance of land by local government unit, conditions

a. A local government unit may convey lands held by the local government unit for recreation and conservation purposes to the federal government, the State, another local government unit, or a qualifying tax exempt nonprofit organization, provided that (1) the lands will continue to be preserved and used for recreation and conservation purposes, (2) any restrictions on the lands when they were held by the local government unit are maintained by the new owner, and (3) at least one public hearing on the proposed conveyance is held by the local government unit at least 90 days prior to final approval thereof by the local government unit.

b. The local government unit shall provide to the commissioner (1) at least 30 days' advance written notice of any public hearing to be held on any such conveyance, (2) within 90 days after final approval of the conveyance by the local government unit, written proof that any such public hearing was held, and (3) written notice of the conveyance within 90 days after it has been executed.

History: L. 1999, c. 152, § 34.

§ 13:8C-35. Conveyance of land acquired using dedicated money by State, county, local government unit, restrictions

a. No lands acquired or developed by the State for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part may be conveyed except in accordance with the provisions of this act, P.L.1993, c.38 (C.13:1D-51 et seq.), and any other applicable law.

b. No lands acquired or developed by a county for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part may be conveyed except in accordance with the provisions of this act, P.L.1993, c.36 (C.40A:12-13.5 et seq.), and any other applicable law.

c. No lands acquired or developed by a local government unit, other than a county, for recreation and conservation purposes using constitutionally dedicated moneys in whole or in part may be conveyed except in accordance with the provisions of this act and any other applicable law.

History: L. 1999, c. 152, § 35.

§ 13:8C-36. Operation, maintenance of lands

A local government unit that receives a grant or loan for recreation and conservation purposes pursuant to this act shall satisfactorily operate and maintain the lands acquired or developed pursuant to the conditions of the agreement between the local government unit and the department when the grant or loan is made. In the event that the local government unit cannot or will not correct deficiencies in the operation and maintenance within a reasonable time period, the commissioner may require the repayment of all or a portion of the grant or loan amount received by the local government unit.

History: L. 1999, c. 152, § 36.

§ 13:8C-37. Use of funds appropriated for farmland preservation

a. Moneys appropriated from the Garden State Farmland Preservation Trust Fund to the State Agriculture Development Committee for farmland preservation purposes shall be used by the committee to:

(1) Provide grants to local government units to pay up to 80% of the cost of acquisition of development easements on farmland, and to qualifying tax exempt nonprofit organizations to pay up to 50% of the cost of acquisition of development easements on farmland as provided in section 39 of this act, provided that any funds received for the transfer of a development easement shall be dedicated to the future purchase of development easements on farmland and the State's pro rata share of any such funds shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund and provided that the terms of any such development easement to be acquired by a qualifying tax exempt nonprofit organization shall be approved by the committee;

(2) Provide grants to local government units to pay up to 80% of the cost of acquisition of fee simple titles to farmland from willing sellers only, and to qualifying tax exempt nonprofit organizations to pay up to 50% of the cost of acquisition of fee simple titles to farmland from willing sellers only as provided in section 39 of this act, which shall be offered for resale or lease with agricultural deed restrictions, as determined by the committee, and any proceeds received from a resale shall be dedicated for farmland preservation purposes and the State's pro rata share of any such proceeds shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund;

(3) Pay the cost of acquisition by the State of development easements on farmland, provided that any funds received for the transfer of a development easement shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund; and

(4) Pay the cost of acquisition by the State of fee simple titles to farmland from willing sellers only, which shall be offered for resale or lease with agricultural deed restrictions, as determined by the committee, and any proceeds received from a resale or lease shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund.

b. Moneys appropriated from the fund may be used to match grants, contributions, donations, or reimbursements from federal aid programs or from other public or private sources established for the same or similar purposes as the fund.

History: L. 1999, c. 152, § 37.

§ 13:8C-38. Acquisitions, grants with respect to farmland preservation

a. All acquisitions or grants made pursuant to section 37 of P.L.1999, c.152 (C.13:8C-37) shall be made with respect to farmland devoted to farmland preservation under programs established by law.

b. The expenditure and allocation of constitutionally dedicated moneys for farmland preservation purposes shall reflect the geographic diversity of the State to the maximum extent practicable and feasible.

c. The committee shall implement the provisions of section 37 of P.L.1999, c.152 (C.13:8C-37) in accordance with the procedures and criteria established pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.) except as provided otherwise by this act.

d. The committee shall adopt the same or a substantially similar method for determining, for the purposes of this act, the committee's share of the cost of a development easement on farmland to be acquired by a local government as that which is being used by the committee on the date of enactment of this act for prior farmland preservation funding programs.

e. Notwithstanding the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31) or this act, or any rule or regulation adopted pursuant thereto, to the contrary, whenever the value of a development easement on farmland to be acquired using constitutionally dedicated moneys in whole or in part is determined based upon the value of any pinelands development credits allocated to the parcel pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.) and the pinelands comprehensive management plan adopted pursuant thereto, the committee shall determine the value of the development easement by:

(1) conducting a sufficient number of fair market value appraisals as it deems appropriate to determine the value for farmland preservation purposes of the pinelands development credits;

(2) considering development easement values in counties, municipalities, and other areas (a) reasonably contiguous to, but outside of, the pinelands area, which in the sole opinion of the committee constitute reasonable development easement values in the pinelands area for the purposes of this subsection, and (b) in the pinelands area where pinelands development credits are or may be utilized, which in the sole opinion of the committee constitute reasonable development easement values in the pinelands area for the purposes of this subsection;

(3) considering land values in the pinelands regional growth areas;

(4) considering the importance of preserving agricultural lands in the pinelands area; and

(5) considering such other relevant factors as may be necessary to increase participation in the farmland preservation program by owners of agricultural lands located in the pinelands area.

f. No pinelands development credit that is acquired or obtained in connection with the acquisition of a development easement on farmland or fee simple title to farmland by the State, a local government unit, or a qualifying tax exempt nonprofit organization using constitutionally dedicated moneys in whole or in part may be conveyed in any manner. All such pinelands development credits shall be retired permanently.

g. (Deleted by amendment, P.L.2010, c.70)

h. Any farmland for which a development easement or fee simple title has been acquired pursuant to section 37 of P.L.1999, c.152 (C.13:8C-37) shall be entitled to the benefits conferred by the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.) and the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.).

i. (Deleted by amendment, P.L.2010, c.70)

j. (1) Commencing on the date of enactment of P.L.2004, c.120 (C.13:20-1 et al.) and through June 30, 2024 for lands located in the Highlands Region as defined pursuant to section 3 of P.L.2004, c.120 (C.13:20-3), when the committee, a local government unit, or a qualifying tax exempt nonprofit organization seeks to acquire a development easement on farmland or the fee simple title to farmland for farmland preservation purposes

using constitutionally dedicated moneys in whole or in part, Green Acres bond act moneys in whole or in part, or constitutionally dedicated CBT moneys pursuant to P.L.2016, c.12 (C.13:8C-43 et seq.) in whole or in part, it shall conduct or cause to be conducted an appraisal or appraisals of the value of the lands that shall be made using (a) the land use zoning of the lands, and any State environmental laws or Department of Environmental Protection rules and regulations that may affect the value of the lands, subject to the appraisal and in effect at the time of proposed acquisition, and (b) the land use zoning of the lands, and any State environmental laws or Department of Environmental Protection rules and regulations that may affect the value of the lands, subject to the appraisal and in effect on January 1, 2004. The higher of those two values shall be utilized by the committee, a local government unit, or a qualifying tax exempt nonprofit organization as the basis for negotiation with the landowner with respect to the acquisition price for the lands. The landowner shall be provided with both values determined pursuant to this paragraph.

A landowner may waive any of the requirements of this paragraph and may agree to sell the lands for less than the values determined pursuant to this paragraph.

The provisions of this paragraph shall be applicable only to lands the owner of which at the time of proposed acquisition is the same person who owned the lands on the date of enactment of P.L.2004, c.120 (C.13:20-1 et al.) and who has owned the lands continuously since that enactment date, or is an immediate family member of that person.

(2) (Deleted by amendment, P.L.2010, c.70)

(3) The requirements of this subsection shall be in addition to any other requirements of law, rule, or regulation not inconsistent therewith.

(4) This subsection shall not:

(a) apply in the case of lands to be acquired with federal moneys in whole or in part;

(b) (Deleted by amendment, P.L.2010, c.70); or

(c) alter any requirements to disclose information to a landowner pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

(5) For the purposes of this subsection, "immediate family member" means a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption.

k. The committee and the Department of Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall jointly adopt rules and regulations that establish standards and requirements regulating any improvement on lands acquired by the State for farmland preservation purposes using constitutionally dedicated moneys to assure that any improvement does not diminish the protection of surface water or groundwater resources.

Any rules and regulations adopted pursuant to this subsection shall not apply to improvements on lands acquired prior to the adoption of the rules and regulations.

l. (1) The committee, within three months after the date of the first meeting of the Highlands Water Protection and Planning Council established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), shall consult with and solicit recommendations from the council concerning farmland preservation strategies and acquisition plans in the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

The council's recommendations shall also address strategies and plans concerning establishment by the committee of a methodology for prioritizing the acquisition of development easements and fee simple titles to farmland in the Highlands preservation area, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), for farmland preservation purposes using moneys from the Garden State Farmland Preservation Trust Fund, especially with respect to farmland that has declined substantially in value due to the implementation of the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.). The recommendations may also include a listing of specific parcels in the Highlands preservation area that the council is aware of that have experienced a substantial decline in value and for that reason should be considered by the committee as

a priority for acquisition, but any such list shall remain confidential notwithstanding any provision of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary.

(2) In prioritizing applications for funding submitted by local government units in the Highlands planning area, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), to acquire development easements on farmland in the Highlands planning area using moneys from the Garden State Farmland Preservation Trust Fund, the committee shall accord a higher weight to any application submitted by a local government unit to preserve farmland in a municipality in the Highlands planning area that has amended its development regulations in accordance with section 13 of P.L.2004, c.120 (C.13:20-13) to establish one or more receiving zones for the transfer of development potential from the Highlands preservation area, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), than that which is accorded to comparable applications submitted by other local government units to preserve farmland in municipalities in the Highlands planning area that have not made such amendments to their development regulations.

m. Notwithstanding any provision of P.L.1999, c.152 (C.13:8C-1 et seq.) to the contrary, for State fiscal years 2005 through 2009, the sum spent by the committee in each of those fiscal years for the acquisition by the committee of development easements and fee simple titles to farmland for farmland preservation purposes using moneys from the Garden State Farmland Preservation Trust Fund in each county of the State shall be not less, and may be greater if additional sums become available, than the average annual sum spent by the department therefor in each such county, respectively, for State fiscal years 2002 through 2004, provided there is sufficient and appropriate farmland within the county to be so acquired by the committee for such purposes.

History: L. 1999, c. 152, § 38; amended 2001, c. 315, § 2; 2002, c. 76, § 6; 2004, c. 120, § 54; 2010, c. 70, § 3; 2015, c. 5, § 2; 2019, c. 136, § 9.

§ 13:8C-38.1. Solicitation of development easements, fee simple interests in farmland

a. To accomplish the expenditure provisions required pursuant to section 38 of P.L. 1999, c. 152 (C. 13:8C-38), and advance the preservation of important agricultural resources of the State, the State Agriculture Development Committee shall solicit, at least annually, applications for sale to the committee of development easements on farmland and fee simple interests in farmland. The committee shall utilize appropriate farmland resource data and information available to effectively identify and target farmland resources eligible for inclusion in the farmland preservation program.

b. The committee shall request, at least annually, the opinion of the respective county agriculture development boards regarding farmland that, in the opinion of each board, is appropriate and suitable for targeting and acquisition under the State development easement and fee simple acquisition programs in order to further and effectuate the goals and objectives of the respective county farmland preservation program.

c. The committee shall utilize the priority system, ranking criteria, and funding policies established by the committee pursuant to the "Agriculture Retention and Development Act", P.L. 1983, c. 32 (C. 4:1C-11 et seq.) to identify, process, and preserve eligible farms through the farmland preservation program.

History: L. 2005, c. 178, § 7.

§ 13:8C-38.2. Report of farms preserved through receipt of grants

a. The State Agriculture Development Committee shall prepare and issue at least annually a report listing the farms preserved through the acquisition by the committee of development easements on farmland or the acquisition of fee simple interests in farmland using monies appropriated from the Garden State Farmland Preservation Trust Fund or any other source. The report also shall include a list of any farms that have received soil and water conservation grants from the State in the prior State fiscal year. The report shall identify each farm by name and provide the county and municipality in which it is located.

b. Each report shall be transmitted within 15 business days after its issuance to: (1) the President of the Senate; (2) the Speaker of the General Assembly; (3) the chairpersons of the Senate Economic Growth Committee and the Assembly Agriculture and Natural Resources Committee, or their successors as designated by the President of the Senate and the Speaker of the General Assembly, respectively; (4) the Garden State Preservation Trust established

pursuant to section 4 of P.L. 1999, c. 152 (C. 13:8C-4); (5) the Highlands Water Protection and Planning Council established pursuant to section 4 of P.L. 2004, c. 120 (C. 13:20-4); and (6) the Pinelands Commission established pursuant to section 4 of P.L. 1979, c. 111 (C. 13:18A-4). Copies of each report shall also be made available to the public upon request and on the Internet website maintained by the State Agriculture Development Committee.

History: L. 2005, c. 178, § 8.

§ 13:8C-39. Grant to qualifying tax exempt nonprofit organization for farmland

a. The committee may provide a grant to a qualifying tax exempt nonprofit organization for up to 50% of the cost of acquisition of (1) a development easement on farmland, provided that the terms of any such development easement shall be approved by the committee, or (2) fee simple title to farmland, which shall be offered for resale or lease with an agricultural deed restriction, as determined by the committee, and any proceeds received from a resale shall be dedicated for farmland preservation purposes and the State's pro rata share of any such proceeds shall be deposited in the Garden State Farmland Preservation Trust Fund to be used for the purposes of that fund.

b. The value of a development easement or fee simple title shall be established by two appraisals conducted on each parcel and certified by the committee. The appraisals shall be conducted by independent professional appraisers selected by the qualifying tax exempt nonprofit organization and approved by the committee from among members of recognized organizations of real estate appraisers.

c. The appraisals shall determine the fair market value of the fee simple title to the parcel, as well as the fair market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the parcel for nonagricultural purposes, which shall be the value of the development easement.

d. Any grant provided to a qualifying tax exempt nonprofit organization pursuant to this section shall not exceed 50% of the appraised value of the development easement, or of the fee simple title in the case of fee simple acquisitions, plus up to 50% of any costs incurred including but not limited to the costs of surveys, appraisals, and title insurance.

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

f. To qualify to receive a grant pursuant to this section, the applicant shall:

(1) demonstrate that it has the resources to match the grant requested; and

(2) in the case of the acquisition of a development easement, agree not to convey the development easement except to the federal government, the State, a local government unit, or another qualifying tax exempt nonprofit organization, for farmland preservation purposes.

g. (1) In deciding whether to award a grant to a qualifying tax exempt nonprofit organization pursuant to this section, the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) For the purposes of this subsection: "historic building or structure," in the context of the grant program for qualifying tax exempt nonprofit organizations to acquire development easements on farmland for farmland preservation purposes, means the same as that term is defined pursuant to subsection c. of section 2 of P.L. 2001, c. 405 (C. 13:8C-40.2); and "historic building or structure," in the context of the grant program for qualifying tax exempt nonprofit organizations to acquire fee simple titles to farmland for farmland preservation purposes, means the same as that term is defined pursuant to subsection c. of section 1 of P.L. 2001, c. 405 (C. 13:8C-40.1).

History: L. 1999, c. 152, § 39; amended 2001, c. 405, § 5.

§ 13:8C-40. Acquisition, permanent retirement of development easements on farmland

a. The committee may acquire and permanently retire development easements on farmland.

b. The committee shall evaluate the suitability of the acquisition of a development easement based upon the eligibility criteria listed in section 24 of P.L. 1983, c. 32 (C. 4:1C-31) and any other criteria that may be adopted by the committee.

c. Appraisals to determine the fair market value of a development easement to be acquired by the committee shall be conducted by appraisers approved by the committee and in a manner consistent with the process set forth in subsection c. of section 24 of P.L. 1983, c. 32 (C. 4:1C-31).

d. Any development easement acquired by the committee shall be held of record in the name of the committee.

History: L. 1999, c. 152, § 40; amended 2001, c. 405, § 6.

§ 13:8C-40.1. Property acquired for farmland preservation of historic buildings, structures; terms defined

a. Notwithstanding any law, rule, or regulation to the contrary, whenever the State, a local government unit, or a qualifying tax exempt nonprofit organization acquires, for farmland preservation purposes using constitutionally dedicated moneys in whole or in part, the fee simple title to farmland which is to be offered for resale or lease with agricultural deed restrictions as determined by the committee, and there is an historic building or structure located on the farmland, the State, local government unit, or qualifying tax exempt nonprofit organization may, with the approval of the committee:

(1) place a historic preservation restriction on any historic building or structure on the farmland as a condition of the resale or lease of the farmland; or

(2) subdivide the historic building or structure, together with at least enough associated acreage to meet local zoning requirements, from the remaining portion of the farmland, and, after placing a historic preservation restriction upon the historic building or structure, offer the historic building or structure for resale or lease separately from the remaining portion of the farmland.

b. A historic preservation restriction may be placed on any historic building or structure on farmland as provided pursuant to subsection a. of this section even if the proceeds received from the resale or lease of the farmland or the historic building or structure would be less than otherwise would have been realized for use for farmland preservation purposes without the historic preservation restriction in place or the subdivision having been made.

c. For the purposes of this section:

"Historic building or structure" means a building or structure that:

(1) is included, meets the criteria for inclusion, or has been determined to be potentially eligible for inclusion in the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (C. 13:1B-15.128 et seq.) or any rules or regulations adopted pursuant thereto;

(2) has been recognized by a county or municipality as a place of historic interest in a county or municipal master plan;

(3) is located in a historic district on a municipal zoning map; or

(4) meets any other criteria which may be adopted by the committee, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), for recognizing the historical value or significance of a building or structure on farmland; and

"Historic preservation restriction" means the same as that term is defined pursuant to section 2 of P.L. 1979, c. 378 (C. 13:8B-2).

History: L. 2001, c. 405, § 1.

§ 13:8C-40.2. Demolishing of historic building, structure prohibited, terms defined

a. No historic building or structure located on farmland for which a development easement has been acquired by the State, a local government unit, or a qualifying tax exempt nonprofit organization after one year from the date of enactment of this act for farmland preservation purposes using constitutionally dedicated moneys in whole or in part may be demolished by the landowner or any other person without the prior approval of the committee.

b. (1) The committee may institute a civil action in a court of competent jurisdiction to prohibit or prevent a violation of this section, and the court may proceed in the action in a summary manner. The committee may also seek damages and other appropriate relief for a violation of this section.

(2) The committee may, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations providing for liquidated damages to be paid by the violator to the committee in the event of a violation of this section.

c. For the purposes of this section:

"Historic building or structure" means a building or structure that:

(1) is included in the New Jersey Register of Historic Places established pursuant to P.L. 1970, c. 268 (C. 13:1B-15.128 et seq.); or

(2) meets any other criteria which may be adopted by the committee, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), for recognizing the historical value or significance of a building or structure on farmland, and which criteria may include but need not be limited to (a) the building or structure having met the criteria for inclusion, or having been determined to be potentially eligible for inclusion, in the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.) or any rules or regulations adopted pursuant thereto; (b) recognition by a county or municipality of the building or structure as a place of historic interest in a county or municipal master plan; or (c) location of the building or structure in a historic district on a municipal zoning map; and

"Historic preservation restriction" means the same as that term is defined pursuant to section 2 of P.L. 1979, c. 378 (C. 13:8B-2).

History: L. 2001, c. 405, § 2.

§ 13:8C-41. Use of moneys appropriated to New Jersey Historic Trust

a. Moneys appropriated from the Garden State Historic Preservation Trust Fund to the New Jersey Historic Trust for historic preservation purposes shall be used by the New Jersey Historic Trust to provide grants to local government units or qualifying tax exempt nonprofit organizations to pay a portion of the cost of preservation of historic properties. Grants shall be awarded on a competitive basis based upon the following criteria:

(1) submission of specific plans and objectives for the preservation of the architectural and historical integrity of the project, including a statement of public benefit and the need for the work proposed;

(2) demonstration by the applicant of administrative capabilities to carry out the preservation plans required pursuant to paragraph (1) of this subsection;

(3) evidence of ability to meet the eligibility standards set forth in subsection b. of this section; and

(4) evidence that the historic property is and shall remain accessible to the public, or if it is not accessible to the public at the time of application, that it shall be made, and shall remain, accessible to the public.

b. To qualify to receive a construction grant pursuant to this section, the applicant shall:

(1) if not in ownership in fee simple of the property, obtain a valid lease of a term acceptable to the New Jersey Historic Trust within 18 months after the date of the appropriation by law of the moneys for the grant, or the grant for the project shall lapse into the Garden State Historic Preservation Trust Fund;

(2) certify that the property is an historic property and, if it is not listed in the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.), agree to list it in that register;

(3) demonstrate that it has the resources to match the grant requested;

(4) agree, if requested by the New Jersey Historic Trust, to execute and donate at no charge to the New Jersey Historic Trust or another entity designated by the New Jersey Historic Trust, an historic preservation restriction pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.) on the historic property; and

(5) in the case of a qualifying tax exempt nonprofit organization, agree not to convey the historic property to any person or organization that does not have tax exempt nonprofit or governmental status without the approval of the New Jersey Historic Trust.

c. Moneys raised within two years prior to the date of enactment of this act for ongoing historic preservation projects may be used by an applicant to meet the matching requirements of this section, but moneys raised prior thereto may not be used for that purpose.

d. No grant awarded pursuant to this section may exceed $750,000.

e. Recipients of grants awarded pursuant to this section shall reflect the racial, ethnic, and geographic diversity of the State.

f. Any local government unit or qualifying tax exempt nonprofit organization awarded a grant pursuant to this section shall execute a contract between that entity and the New Jersey Historic Trust within 18 months after the date of the appropriation by law of the moneys for the grant, or the grant for the project shall lapse into the Garden State Historic Preservation Trust Fund.

g. The New Jersey Historic Trust shall establish an advisory committee composed of trustees of the New Jersey Historic Trust and other individuals with the requisite professional expertise to evaluate the grant applications submitted pursuant to this section and to advise the New Jersey Historic Trust on the merits of each application received.

h. Moneys appropriated from the fund may be used to match grants, contributions, donations, or reimbursements from federal aid programs or from other public or private sources established for the same or similar purposes as the fund.

History: L. 1999, c. 152, § 41.

§ 13:8C-42. Rules, regulations; contracts; study of utility easements

a. The Department of Environmental Protection, the State Agriculture Development Committee, the New Jersey Historic Trust, and the Department of the Treasury shall each adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement and carry out the goals and objectives of Article VIII, Section II, paragraph 7 of the State Constitution and this act.

b. Notwithstanding the provisions of any law to the contrary, any rules and regulations of the Department of Environmental Protection, the State Agriculture Development Committee, the New Jersey Historic Trust, and the Department of the Treasury that have been adopted pursuant to the "Administrative Procedure Act" and are in effect as of the date of enactment of this act, that are not inconsistent with the provisions of this act, and that pertain to the Green Acres, farmland preservation, and historic preservation programs continued pursuant to this act, shall continue in effect until amended or supplemented and readopted as necessary to reflect the provisions and requirements of Article VIII, Section II, paragraph 7 of the State Constitution and this act.

c. In order to implement the funding provisions provided for in this act, the State Treasurer, the Department of Environmental Protection, the State Agriculture Development Committee, the New Jersey Historic Trust, and the Garden State Preservation Trust are hereby authorized to enter into one or more contracts. The contracts shall commence in the State fiscal year beginning July 1, 1999, and provide for the credit to the Garden State Preservation Trust Fund Account in the amounts provided for in section 17 of this act and for the payment to the Garden State Preservation Trust of the amounts credited to the Garden State Preservation Trust Fund Account in accordance with the provisions of section 17 of this act. The contracts shall also provide for the payment by the Garden State Preservation Trust of the amounts provided for in section 18 of this act and for expenditures from the Garden State Green Acres Preservation Trust Fund, the Garden State Farmland Preservation Trust Fund, and the Garden State Historic Preservation Trust Fund, as provided in section 18 of this act. The contract or contracts shall be on terms and conditions as determined by the parties and may contain terms and conditions necessary

and desirable to secure the bonds, notes and other obligations of the Garden State Preservation Trust, provided, however, that the incurrence of any obligation by the State under the contract or contracts, including any payments to be made thereunder from the Garden State Preservation Trust Fund Account, the Garden State Green Acres Preservation Trust Fund, the Garden State Farmland Preservation Trust Fund, or the Garden State Historic Preservation Trust Fund, as provided in sections 17, 19, 20, and 21 of this act, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

d. Within one year after the date of enactment of this act, the Department of Environmental Protection, the State Agriculture Development Committee, and the State House Commission established pursuant to R.S.52:20-1 et seq. shall conduct a study of the process by which easements are granted to public utilities, as defined in Title 48 of the Revised Statutes, on lands acquired for recreation and conservation purposes or for farmland preservation purposes, and prepare and submit to the Legislature a written report of the study findings together with any recommendations for legislative or administrative action that would improve that process. The agencies shall jointly hold at least one public hearing to receive testimony on the issue prior to preparation of the report.

History: L. 1999, c. 152, § 42.

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§ 13:8C-43. Short title. [Preserve New Jersey Act]

This act shall be known, and may be cited, as the "**Preserve New Jersey Act**."

History: L. 2016, c. 12, § 1.

§ 13:8C-44. Findings, declarations relative to the "Preserve New Jersey Act."

The Legislature finds and declares that:

a. Enhancing the quality of life of the citizens of New Jersey is a paramount policy of the State, and the acquisition, preservation, and stewardship of open space, farmland, and historic properties in New Jersey protect and enhance the character and beauty of the State and provide its citizens with greater opportunities for recreation, relaxation, and education;

b. The lands and resources now dedicated to these purposes will not be adequate to meet the needs of an expanding population in years to come, and the open space and farmland that is available and appropriate for these purposes will gradually disappear as the costs of preserving them correspondingly increase;

c. The Delaware River, the Passaic River, and the Raritan River, and their respective tributaries, and many other areas throughout the State have been subject to serious flooding over the years, causing on some occasions loss of life and significant property damage;

d. Beginning on October 28, 2012, the post-tropical storm commonly referred to as "Hurricane Sandy" struck New Jersey, producing unprecedented severe weather conditions, including enormous storm surges, devastating wind, and widespread flooding, crippling entire communities across New Jersey, and inflicting incalculable harm to the economy of the State;

e. The acquisition of properties damaged by Hurricane Sandy and of other damaged and flood-prone properties throughout the State is in the best interests of the State to prevent future losses of life and property;

f. "Blue Acres" is the term used to refer to the acquisition, for recreation and conservation purposes, of lands that have been damaged by, or may be prone to incurring damage caused by, storms or storm-related flooding, or that may buffer or protect other lands from such damage;

g. Under the Blue Acres Program, structures on acquired property are demolished, the debris is removed, and the property is preserved for recreation and conservation purposes;

h. Agriculture plays an integral role in the prosperity and well-being of the State as well as providing a fresh and abundant supply of food for its citizens;

i. Much of the farmland in the State faces an imminent threat of permanent conversion to non-farm uses, and retention and development of an economically viable agricultural industry is of high public priority;

j. There is an urgent need to preserve the State's historic heritage to enable present and future generations to experience, understand, and enjoy the landmarks of New Jersey's role in the birth and development of this nation;

k. The restoration and preservation of properties of historic character and importance in the State are central to meeting this need, and a significant number of these historic properties are located in urban centers, where their restoration and preservation will advance urban revitalization efforts of the State and local governments;

l. There is growing public recognition that the quality of life, economic prosperity, and environmental quality in New Jersey are served by the protection and timely preservation of open space and farmland and better management of the lands, resources, historic properties, and recreational facilities that are already under public ownership or protection;

m. The protection and preservation of New Jersey's water resources, including the quality and quantity of the State's limited water supply, are essential to the quality of life and the economic health of the citizens of the State;

n. The preservation of the existing diversity of animal and plant species is essential to sustaining both the environment and the economy of the Garden State, and the conservation of adequate habitat for endangered, threatened, and other rare species is necessary to preserve this biodiversity;

o. As recognized by the voters of the State when they, on November 4, 2014, approved an amendment to the State Constitution to dedicate a portion of corporation business tax revenues specifically for the purposes of open space, farmland, and historic preservation, there is a need to continue the State open space, farmland, and historic preservation programs previously funded by the "Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009" (P.L.2009, c.117), the "Green Acres, Farmland, Blue Acres, and Historic Preservation Bond Act of 2007" (P.L.2007, c.119), Article VIII, Section II, paragraph 7 of the State Constitution, the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995" (P.L.1995, c.204), and the nine previous similar bond acts enacted in 1961, 1971, 1974, 1978, 1981, 1983, 1987, 1989, and 1992, and various implementing laws; and

p. It is therefore in the public interest to preserve and protect as much land for recreation and conservation purposes, including lands that protect water supplies and flood-prone lands, and for farmland preservation purposes, and as many historic properties, as possible within the means provided by Article VIII, Section II, paragraph 6 of the State Constitution.

History: L. 2016, c. 12, § 2.

§ 13:8C-45. Definitions relative to the "Preserve New Jersey Act"

As used in P.L.2016, c.12 (C.13:8C-43 et seq.):

"Acquisition" or "acquire" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Blue Acres cost" means the expenses incurred in connection with: all things deemed necessary or useful and convenient for the acquisition by the State or a qualifying tax exempt nonprofit organization, for recreation and conservation purposes, of lands that have been damaged by, or may be prone to incurring damage caused by, storms or storm-related flooding, or that may buffer or protect other lands from such damage; the execution of any agreements or franchises deemed by the Department of Environmental Protection to be necessary or useful and convenient in connection with any Blue Acres project authorized by P.L.2016, c.12 (C.13:8C-43 et seq.); the procurement or provision of appraisal, archaeological, architectural, conservation, design, engineering, financial, geological, historic research, hydrological, inspection, legal, planning, relocation, surveying, or other professional advice, estimates, reports, services, or studies; the purchase of title insurance; the undertaking of feasibility studies; the demolition of structures, the removal of debris, and the restoration of lands to a natural state or to a state useful for recreation and conservation purposes; the establishment of a reserve fund or funds for working capital, operating, maintenance, or replacement expenses as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine; and reimbursement to any fund of the State of moneys that may have been transferred or advanced therefrom to any fund established by P.L.2016, c.12 (C.13:8C-43 et seq.), or any moneys that may have been expended therefrom for, or in connection with, P.L.2016, c.12 (C.13:8C-43 et seq.).

“Blue Acres project” means any project of the State or a qualifying tax exempt nonprofit organization to acquire, for recreation and conservation purposes, lands that have been damaged by, or may be prone to incurring damage caused by, storms or storm-related flooding, or that may buffer or protect other lands from such damage.

“Commissioner” means the Commissioner of Environmental Protection.

“Committee” means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c.31 (C.4:1C-4).

“Constitutionally dedicated CBT moneys” means any moneys made available pursuant to Article VIII, Section II, paragraph 6 of the State Constitution deposited in the funds established pursuant to sections 6, 7, 8, and 9 of P.L.2016, c.12 (C.13:8C-48 through C.13:8C-51), and appropriated by law, for recreation and conservation, farmland preservation, or historic preservation purposes set forth in Article VIII, Section II, paragraph 6 of the State Constitution or P.L.2016, c.12 (C.13:8C-43 et seq.).

“Convey” or “conveyance” means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

“Cost” means the expenses incurred in connection with: all things deemed necessary or useful and convenient for the acquisition or development of lands for recreation and conservation purposes, the acquisition of development easements or fee simple titles to farmland, or the preservation of historic properties, as the case may be; the execution of any agreements or franchises deemed by the Department of Environmental Protection, State Agriculture Development Committee, or New Jersey Historic Trust, as the case may be, to be necessary or useful and convenient in connection with any project funded in whole or in part using constitutionally dedicated CBT moneys; the procurement or provision of appraisal, archaeological, architectural, conservation, design, engineering, financial, geological, historic research, hydrological, inspection, legal, planning, relocation, surveying, or other professional advice, estimates, reports, services, or studies; the purchase of title insurance; the undertaking of feasibility studies; materials and labor costs for stewardship activities, but not overhead or administration costs for such activities; the establishment of a reserve fund or funds for working capital, operating, maintenance, or replacement expenses, as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine; and reimbursement to any fund of the State of moneys that may have been transferred or advanced therefrom to any fund established by P.L.2016, c.12 (C.13:8C-43 et seq.), or any moneys that may have been expended therefrom for, or in connection with, P.L.2016, c.12 (C.13:8C-43 et seq.).

“Department” means the Department of Environmental Protection.

“Development” or “develop” means, except as used in the definitions of “acquisition” and “development easement” in this section, any improvement, including a stewardship activity, made to a land or water area designed to expand and enhance its utilization for recreation and conservation purposes, and shall include the construction, renovation, or repair of any such improvement, but shall not mean shore protection or beach nourishment or replenishment activities.

“Development easement” means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

“Emergency intervention” means an immediate assessment or capital improvement necessary to protect or stabilize the structural integrity of a historic property.

“Farmland” means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

“Farmland preservation,” “farmland preservation purposes,” or “preservation of farmland” means the same as those terms are defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

“Garden State Preservation Trust” or “trust” means the Garden State Preservation Trust established pursuant to section 4 of P.L.1999, c.152 (C.13:8C-4).

“Green Acres bond act” means: P.L.1961, c.46; P.L.1971, c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265; P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; P.L.2007, c.119; P.L.2009, c.117; and any State general obligation bond act that may be approved after the date of enactment of P.L.2016, c.12 (C.13:8C-43 et seq.) for the purpose of providing funding for the acquisition or development of lands for recreation and conservation purposes or for farmland preservation purposes.

"Historic preservation," "historic preservation purposes," or "preservation of historic properties" means the same as those terms are defined in section 3 of P.L.1999, c.152 (C.13:8C-3) and shall also include emergency intervention and the acquisition of a historic preservation easement.

"Historic preservation easement" means an interest in land, less than fee simple title thereto, that is purchased from a private or governmental property owner to permanently protect a historic property, and that is granted by the property owner to the New Jersey Historic Trust, a local government unit, or a qualifying tax exempt nonprofit organization.

"Historic property" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Land" or "lands" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Local government unit" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"New Jersey Historic Trust" means the entity established pursuant to section 4 of P.L.1967, c.124 (C.13:1B-15.111).

"Permitted investments" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Preserve New Jersey Blue Acres Fund" means the Preserve New Jersey Blue Acres Fund established pursuant to section 7 of P.L.2016, c.12 (C.13:8C-49).

"Preserve New Jersey Farmland Preservation Fund" means the Preserve New Jersey Farmland Preservation Fund established pursuant to section 8 of P.L.2016, c.12 (C.13:8C-50).

"Preserve New Jersey Green Acres Fund" means the Preserve New Jersey Green Acres Fund established pursuant to section 6 of P.L.2016, c.12 (C.13:8C-48).

"Preserve New Jersey Historic Preservation Fund" means the Preserve New Jersey Historic Preservation Fund established pursuant to section 9 of P.L.2016, c.12 (C.13:8C-51).

"Preserve New Jersey Fund Account" means the Preserve New Jersey Fund Account established pursuant to section 4 of P.L.2016, c.12 (C.13:8C-46).

"Project" means all things deemed necessary or useful and convenient in connection with the acquisition or development of lands for recreation and conservation purposes, the acquisition of development easements or fee simple titles to farmland, or the preservation of historic properties, as the case may be.

"Qualifying tax exempt nonprofit organization" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Recreation and conservation purposes" means the same as that term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

"Stewardship activity" means an activity, which is beyond routine operations and maintenance, undertaken by the State, a local government unit, or a qualifying tax exempt nonprofit organization to repair, or restore lands acquired or developed for recreation and conservation purposes for the purpose of enhancing or protecting those lands for recreation and conservation purposes. For the purposes of the farmland preservation program, "stewardship activity" means an activity, which is beyond routine operation and maintenance, undertaken by the landowner, or a farmer operator as an agent of the landowner, to repair, restore, or improve lands preserved for farmland preservation purposes, including, but not limited to, soil and water conservation projects approved pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) and projects that improve the resiliency of farmland soils.

History: L. 2016, c. 12, § 3; amended 2019, c. 136, § 2.

§ 13:8C-46. "Preserve New Jersey Fund Account."

There is established in the General Fund a special account to be known as the "Preserve New Jersey Fund Account."

a. The State Treasurer shall credit to this account:

(1) (a) (i) For State fiscal year 2016, an amount equal to 71 percent of the four percent of the revenue annually derived from the tax imposed pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar

effect, dedicated for recreation and conservation, farmland preservation, and historic preservation purposes pursuant to subparagraph (a) of Article VIII, Section II, paragraph 6 of the State Constitution, less $19,972,000 already appropriated and expended for parks management in P.L.2015, c.63; and

(ii) in each State fiscal year 2017 through and including State fiscal year 2019 an amount equal to 71 percent of the four percent of the revenue annually derived from the tax imposed pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar effect, dedicated to recreation and conservation, farmland preservation, and historic preservation purposes pursuant to subparagraph (a) of Article VIII, Section II, paragraph 6 of the State Constitution; and

(b) in each State fiscal year commencing in State fiscal year 2020 and annually thereafter, an amount equal to 78 percent of the six percent of the revenue annually derived from the tax imposed pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar effect, dedicated to recreation and conservation, farmland preservation, and historic preservation purposes pursuant to subparagraph (a) of Article VIII, Section II, paragraph 6 of the State Constitution; and

(2) in each State fiscal year, an amount equal to the amount dedicated pursuant to subparagraph (b) of Article VIII, Section II, paragraph 6 of the State Constitution.

b. In each State fiscal year, the amount credited to the Preserve New Jersey Fund Account shall be appropriated from time to time by the Legislature only for the applicable purposes set forth in Article VIII, Section II, paragraph 6 of the State Constitution and this act for:

(1) providing funding, including loans or grants, for the preservation, including acquisition, development, and stewardship, of lands for recreation and conservation purposes, including lands that protect water supplies and lands that have incurred flood or storm damage or are likely to do so, or that may buffer or protect other properties from flood or storm damage;

(2) providing funding, including loans or grants, for the preservation and stewardship of land for agricultural or horticultural use and production;

(3) providing funding, including loans or grants, for historic preservation; and

(4) paying administrative costs associated with (1) through (3) of this subsection.

c. Nothing in this act shall authorize any State entity to use constitutionally dedicated CBT moneys for the purpose of making any payments relating to any bonds, notes, or other debt obligations, other than those relating to obligations arising from land purchase agreements made with landowners.

History: L. 2016, c. 12, § 4.

§ 13:8C-47. Deposit of amount credited.

a. In State fiscal year 2017 through and including State fiscal year 2019, of the amount credited by the State Treasurer to the Preserve New Jersey Fund Account pursuant to paragraph (1) of subsection a. of section 4 [C.13:8C-46] of this act:

(1) 60 percent shall be deposited into the Preserve New Jersey Green Acres Fund established pursuant to section 6 [C.13:8C-48] of this act;

(2) 4 percent shall be deposited into the Preserve New Jersey Blue Acres Fund established pursuant to section 7 [C.13:8C-49] of this act;

(3) 31 percent shall be deposited into the Preserve New Jersey Farmland Preservation Fund established pursuant to section 8 [C.13:8C-50] of this act; and

(4) 5 percent shall be deposited into the Preserve New Jersey Historic Preservation Fund established pursuant to section 9 [C.13:8C-51] of this act.

b. In State fiscal year 2017 through and including State fiscal year 2019, of the amount credited by the State Treasurer to the Preserve New Jersey Fund Account pursuant to paragraph (2) of subsection a. of section 4

[C.13:8C-46] of this act, each State park, forest, or wildlife management area shall receive an amount equal to the amount of revenue annually derived from leases or conveyances of lands at that State park, forest, or wildlife management area, as appropriate, to be used for recreation and conservation purposes at that State park, forest, or wildlife management area.

History: L. 2016, c. 12, § 5.

§ 13:8C-47.1. Allocation of Preserve New Jersey Fund Account

a. In each State fiscal year commencing in State fiscal year 2020 and annually thereafter, of the amount credited by the State Treasurer to the Preserve New Jersey Fund Account pursuant to subparagraph (b) of paragraph (1) of subsection a. of section 4 of P.L.2016, c.12 (C.13:8C-46):

(1) 62 percent shall be deposited into the Preserve New Jersey Green Acres Fund;

(2) 31 percent shall be deposited into the Preserve New Jersey Farmland Preservation Fund; and

(3) seven percent shall be deposited into the Preserve New Jersey Historic Preservation Fund.

b. (1) Beginning July 1, 2022, and annually thereafter, the Garden State Preservation Trust shall conduct a review of the appropriations of constitutionally dedicated CBT moneys to, and the expenditures thereof by, the Department of Environmental Protection, the State Agriculture Development Committee, and the New Jersey Historic Trust for their respective programs. In conducting this review, the trust shall: evaluate the demonstrated need for funding for the acquisition or development of lands for recreation and conservation purposes, including Blue Acres projects, farmland preservation purposes, or historic preservation purposes based upon available projects, applicant demand, and past appropriations and expenditures for these purposes; and hold a public hearing to solicit public input on appropriate funding allocations for the department, committee, and New Jersey Historic Trust, for the upcoming fiscal year.

(2) If the trust determines, based on the review conducted pursuant to paragraph (1) of this subsection, that it would be appropriate to revise the allocations set forth in subsection a. of this section, or section 6, 8, or 9 of P.L.2016, c.12 (C.13:8C-48, 50, or 51), the trust shall send a written notification to the Chairperson of the Senate Environment and Energy Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee, or their successors, of its findings and recommendations concerning future funding allocations for the Preserve New Jersey Green Acres Fund, the Preserve New Jersey Farmland Preservation Fund, or the Preserve New Jersey Historic Preservation Fund.

(3) A recommendation by the trust to reallocate constitutionally dedicated CBT moneys based on the review conducted pursuant to this subsection shall not alter the allocations set forth in subsection a. of this section or section 6, 8, or 9 of P.L.2016, c.12 (C.13:8C-48, 50, or 51) for any fiscal year unless authorized by the Legislature.

History: L. 2019, c. 136, § 1.

§ 13:8C-48. "Preserve New Jersey Green Acres Fund"

a. The State Treasurer shall establish a fund to be known as the "Preserve New Jersey Green Acres Fund" and shall deposit into the fund all moneys received pursuant to paragraph (1) of subsection a. of section 5 of P.L.2016, c.12 (C.13:8C-47), paragraph (1) of subsection a. of section 1 of P.L.2019, c.136 (C.13:8C-47.1), and any other moneys appropriated by law for deposit into the fund.

Moneys in the fund shall be invested in permitted investments or shall be held in interest-bearing accounts in those depositories as the State Treasurer may select, and may be invested and reinvested in permitted investments or as other trust funds in the custody of the State Treasurer in the manner provided by law. All interest or other income or earnings derived from the investment or reinvestment of moneys in the fund shall be credited to the fund. Moneys derived from the payment of principal and interest on the loans to local government units authorized by P.L.2016, c.12 (C.13:8C-43 et seq.) shall also be held in the fund.

b. Of the amount deposited in State fiscal year 2017 through and including State fiscal year 2019 into the Preserve New Jersey Green Acres Fund pursuant to paragraph (1) of subsection a. of section 5 of P.L.2016, c.12 (C.13:8C-47):

(1) 55 percent shall be allocated for the purpose of paying the cost of acquisition and development of lands by the State for recreation and conservation purposes, and the amount provided pursuant to this paragraph shall be allocated as follows:

(a) 50 percent shall be allocated for the purpose of paying the cost of acquisition of lands by the State for recreation and conservation purposes; and

(b) 50 percent shall be allocated for the purpose of paying the cost of development of lands by the State for recreation and conservation purposes, and of the amount provided pursuant to this subparagraph:

(i) up to 22 percent shall be allocated for the purpose of paying the cost for stewardship activities undertaken on lands administered by the Division of Fish and Wildlife in the department; and

(ii) up to 22 percent shall be allocated for the purpose of paying the cost for stewardship activities undertaken on lands administered by the Division of Parks and Forestry in the department;

(2) 38 percent shall be allocated for the purposes of providing grants and loans to assist local government units to pay the cost of acquisition and development of lands for recreation and conservation purposes, and of this amount, up to two percent shall be allocated for stewardship activities undertaken by local government units; and

(3) seven percent shall be allocated for the purposes of providing grants to assist qualifying tax exempt nonprofit organizations to pay the cost of acquisition and development of lands for recreation and conservation purposes, and of this amount, 11 percent shall be allocated for stewardship activities undertaken by qualifying tax exempt nonprofit organizations.

c. Any repayments of the principal and interest on loans issued to local government units for the acquisition or development of lands for recreation and conservation purposes using constitutionally dedicated CBT moneys shall be deposited into the Preserve New Jersey Green Acres Fund, and shall be specifically dedicated for the issuance of additional grants and loans in the same manner as provided in subsections a. and b. of section 27 of P.L.1999, c.152 (C.13:8C-27) and this section.

d. (1) The moneys in the fund are specifically dedicated and shall be used for the same purposes and according to the same criteria and provisions as those set forth in section 26 of P.L.1999, c.152 (C.13:8C-26), and as provided pursuant to P.L.2016, c.12 (C.13:8C-43 et seq.) and this section.

(2) Grants and loans issued to local government units and grants issued to qualifying tax exempt nonprofit organizations using constitutionally dedicated CBT moneys for the acquisition and development of lands for recreation and conservation purposes shall be subject to the same provisions as those prescribed in section 27 of P.L.1999, c.152 (C.13:8C-27), except as otherwise provided in section 10 of P.L.2016, c.12 (C.13:8C-52).

(3) Notwithstanding any provision of P.L.2016, c.12 (C.13:8C-43 et seq.) or P.L.1999, c.152 (C.13:8C-1 et seq.) to the contrary, projects of the Palisades Interstate Park Commission established pursuant to P.L.1980, c.104 (C.32:14-1.1 et seq.) for the acquisition or development of land for recreation and conservation purposes in New Jersey shall be considered State projects for the purposes of eligibility for funding pursuant to the provisions of P.L.2016, c.12 (C.13:8C-43 et seq.).

e. Moneys in the fund shall not be expended except in accordance with appropriations from the fund made by law. Any act appropriating moneys from the Preserve New Jersey Green Acres Fund shall identify any particular project or projects to be funded by the moneys, and any expenditure for a project for which the location is not identified by municipality and county in the appropriation shall require the approval of the Joint Budget Oversight Committee, or its successor, except as permitted otherwise in accordance with the same exceptions as those specified in paragraph (2) of subsection a. of section 23 of P.L.1999, c.152 (C.13:8C-23).

f. Unexpended moneys due to project withdrawals, cancellations, or cost savings shall be returned to the fund.

g. Of the amount authorized pursuant to this section, not more than five percent shall be utilized for organizational, administrative and other work and services, including salaries, equipment and materials necessary to administer the applicable provisions of P.L.2016, c.12 (C.13:8C-43 et seq.).

h. To the end that municipalities may not suffer a loss of taxes by reason of the acquisition and ownership by the State of lands in fee simple for recreation and conservation purposes, or the acquisition and ownership by

qualifying tax exempt nonprofit organizations of lands in fee simple for recreation and conservation purposes that become certified as exempt from property taxes pursuant to P.L.1974, c.167 (C.54:4-3.63 et seq.) or similar laws, the State shall make payments annually in the same manner as payments are made pursuant to section 29 of P.L.1999, c.152 (C.13:8C-29).

i. The State shall not use the power of eminent domain in any manner for the acquisition of lands by the State for recreation and conservation purposes using constitutionally dedicated CBT moneys in whole or in part unless a concurrent resolution approving that use is approved by both Houses of the Legislature; except that, without the need for such a concurrent resolution, the State may use the power of eminent domain to the extent necessary to establish a value for lands to be acquired from a willing seller by the State for recreation and conservation purposes using constitutionally dedicated CBT moneys in whole or in part.

j. Of the amount deposited in each State fiscal year commencing in State fiscal year 2020 and annually thereafter into the Preserve New Jersey Green Acres Fund pursuant to paragraph (1) of subsection a. of section 1 of P.L.2019, c.136 (C.13:8C-47.1):

(1) 60 percent shall be allocated for the purpose of paying the cost of acquisition and development of lands by the State for recreation and conservation purposes, and the amount provided pursuant to this paragraph shall be allocated as follows:

(a) 45 percent shall be allocated for the purpose of paying the cost of acquisition of lands by the State for recreation and conservation purposes, and of this amount, a minimum of 10 percent shall be allocated for Blue Acres projects; and

(b) 55 percent shall be allocated for the purpose of paying the cost of development of lands by the State for recreation and conservation purposes, and of the amount provided pursuant to this subparagraph:

(i) up to 22 percent shall be allocated for the purpose of paying the cost for stewardship activities undertaken on lands administered by the Division of Fish and Wildlife in the department; and

(ii) up to 22 percent shall be allocated for the purpose of paying the cost for stewardship activities undertaken on lands administered by the Division of Parks and Forestry in the department;

(2) 30 percent shall be allocated for the purposes of providing grants and loans to assist local government units to pay the cost of acquisition and development of lands for recreation and conservation purposes, including Blue Acres projects, and of this amount, up to 10 percent shall be allocated for stewardship activities undertaken by local government units; and

(3) 10 percent shall be allocated for the purposes of providing grants to assist qualifying tax exempt nonprofit organizations to pay the cost of acquisition and development of lands for recreation and conservation purposes, including Blue Acres projects, and of this amount, 11 percent shall be allocated for stewardship activities undertaken by qualifying tax exempt nonprofit organizations.

k. (1) In addition to the purposes set forth in subsection d. of this section, moneys in the Preserve New Jersey Green Acres Fund may be applied for the purposes of providing moneys to:

(a) meet the Blue Acres costs to the State for the acquisition of lands for a Blue Acres project; or

(b) provide grants, pursuant to the provisions of paragraph (2) of this subsection, to assist a qualifying tax exempt nonprofit organization in meeting the Blue Acres costs for the acquisition of lands for a Blue Acres project.

(2) A grant by the State for lands to be acquired by a qualifying tax exempt nonprofit organization for a Blue Acres project may include up to 50 percent of the Blue Acres cost of acquisition of the lands by the qualifying tax exempt nonprofit organization.

(a) A qualifying tax exempt nonprofit organization shall not use as its matching share of the Blue Acres cost of acquisition of lands for a Blue Acres project any constitutionally dedicated moneys, as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3), or any grant moneys obtained from a Green Acres bond act.

(b) To qualify to receive a grant from the Preserve New Jersey Blue Acres Fund, the board of directors or governing body of the applying tax exempt nonprofit organization shall:

(i) demonstrate to the commissioner that the organization qualifies as a charitable conservancy for the purposes of P.L.1979, c.378 (C.13:8B-1 et seq.);

(ii) demonstrate that the organization has the resources to match the grant requested;

(iii) agree to make and keep the lands accessible to the public, unless the commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith;

(iv) agree not to convey the lands except to the federal government, the State, a local government unit, or another qualifying tax exempt nonprofit organization, for recreation and conservation purposes; and

(v) agree to execute and donate to the State at no charge a conservation restriction pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.) on the lands to be acquired with the grant.

l. In addition to any other reporting requirements required by law, the department shall annually send a written report to the Chairperson of the Senate Environment and Energy Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee, or their successors, identifying the projects funded with moneys pursuant to subparagraph (b) of paragraph (1) of subsection j. of this section. This report shall: (1) identify the project type, location, and cost for each development project; and (2) identify the stewardship activities, including the location and cost for each stewardship activity, undertaken on lands administered by the Division of Fish and Wildlife and Division of Parks and Forestry pursuant to subparagraph (b) of paragraph (1) of subsection j. of this section.

History: L. 2016, c. 12, § 6; amended 2018, c. 95, § 1; 2019, c. 136, § 3.

https://lis.njleg.state.nj.us/nxt/gateway.dll/statutes/1/8670/9722?f=templates&fn=default.htm&vid=Publish:10.1048/Enu