

LOCAL FINANCE NOTICECHRISTINE TODD WHITMAN
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COMMISSIONERBETH GATES
Director**Open Space, Recreation, Farmland and Historic Preservation
Trust Fund Taxing Districts
P.L. 1997, C. 24 (N.J.S.A. 40:12-15.1 et seq.)**

In early 1997, Governor Whitman signed into law P.L. 1997, c.24, (N.J.S.A. 40:12-15.1 et seq.) which revised laws related to the establishment of dedicated taxes for various open space purposes. The new law standardized what were two separate statutes, one for municipalities and one for counties, and expanded the purposes for which dedicated taxes can be used. This Local Finance Notice reviews the general provisions of the law, and sets forth procedures for local units to follow for budgetary and accounting purposes for these programs. Local units considering adopting or implementing these programs should carefully review the law before moving forward with spending plans or imposing dedicated taxes.

Intent of P.L. 1997, C. 24

By replacing older laws for dedicated county and municipal tax levies (N.J.S.A. 40:12-10 et seq) with separate, but similar sections for counties and municipalities, the new law sets forth procedures for establishing a dedicated tax for one or more of the following purposes:

1. Acquisition of lands for recreation and conservation purposes;
2. Development of lands acquired for recreation and conservation purposes;
3. Maintenance of lands acquired for recreation and conservation purposes;
4. Acquisition of farmland for farmland preservation purposes;
5. Historic preservation of historic properties, structures, facilities, sites, areas, or objects, and the acquisition of such properties, facilities, sites, areas, or objects for historic preservation purposes; and,
6. Payment of debt service on indebtedness issued or incurred by a county or municipality for any of the purposes set forth above.

To establish a dedicated tax program, the governing body of a county or municipality may ask voters to authorize a fund dedicated for any or all of the purposes listed above. The law requires a referendum, initiated by the governing body or through a petition submitted by 15 percent of the voters, held at a general or special election. A fixed tax rate or specific tax levy are the options for funding the program, and proceeds are set aside in a dedicated trust fund. Changes to the rate or tax levy must be authorized by referendum.

The referendum question can provide that the revenues will be proportionally allocated for any of the permitted purposes. If funds are not allocated through the referendum, the governing body may allocate them after conducting at least one public hearing on the subject. Though not required, the Division recommends that these hearings be conducted in concert with the annual budget process. Additionally, if a public hearing

has been conducted and funds allocated by purpose, a public hearing must be held if changes are to be made in the allocation.

The law also has a number of specific requirements about how referendums are conducted, which should be carefully studied when planning one.

The law also addresses several special circumstances regarding the programs:

- Existing county open space trust funds, under P.L. 1989, c .30 (N.J.S.A. 40:12-16 et seq.) and public recreation systems, under N.J.S.A. 40:12-10 are converted to the new law's trust fund model.
- Those counties or municipalities with existing programs must conduct a public hearing in order to use existing and new dedicated funds. In addition, where a county had previously established an open space and farmland preservation program (N.J.S.A. 40:12-16 et seq), it cannot spend more than \$100,000 for any project or use without holding a public hearing at least 45 days prior to the proposed expenditure. Specific kinds of public notice must be provided for these hearings.
- Dedicated county funds may only be expended after the adoption of formal plans for the various purposes. For example, County Agriculture Development Boards are responsible for prioritizing projects for farmland preservation. Trust funds may be used for preparing these plans.
- Changes in purposes or ownership of property acquired with funds from the program are permitted, provided that a public hearing is conducted and the lands are replaced with property of equal value and usefulness.
- County taxes are apportioned through the normal county board of taxation procedures for allocation of county taxes.
- Counties can distribute funds to municipalities or charitable conservancies for purposes of the act. These funds are subject to conditions including the following: 1) lands acquired must be held in trust; 2) municipalities may adopt rules for use and charging of fees; 3) and charitable conservancies are subject to specific requirements (N.J.S.A. 40:12-15.6(d)).

Budgeting and Accounting of Funds

The law specifically requires funds raised through the dedicated tax to be deposited into a dedicated trust fund called the "County/Municipal Open Space, Recreation, and Farmland and Historic Preservation Trust Fund" (CMOSRFHPTF). The county or municipality must formally create the trust fund by passing a resolution requesting dedication by rider trust fund approval from the Division. The resolution and a copy of the referendum question and certified results must be submitted with the resolution. A CAP base adjustment will have to be made for any previously budgeted appropriations shifted to the trust fund.

Interest earned on investment of the funds is to be credited to the fund. Sub-accounts may be created if the referendum required specific dedication by use of funds.

Approximately 30 counties and municipalities have taken advantage of this law already. In order to ensure public disclosure and accounting of funds under this law, the Division is requiring that the amounts and purposes be disclosed as part of the annual budget process. To this end, a separate section of the budget has

been created, (the form is enclosed with this Notice) to formally document the fund's accounting. The amount of the tax levy, which must be reported on the open space budget form, will be certified to the County Board of Taxation by the Division at the same time the municipal purposes tax levy is certified. Planned capital spending of trust funds must be included as part of the local unit's capital budget.

Questions regarding the creation of trust funds should be directed to local legal counsel. The Division will assist with advice regarding accounting and reporting, but the referendum and allocation of spending process is subject to local interpretation and actions.

Recipient Clerks are asked to provide copies of this Notice to elected officials, the Chief Financial Officer, and legal counsel.

A handwritten signature in black ink that reads "Beth Gates". The signature is written in a cursive, flowing style. To the right of the signature is a short horizontal line.

Beth Gates, Director
Division of Local Government Services

Enclosure

Distribution: Municipal Clerks and Clerks to the Board of Chosen Freeholders