

4:1C-49. Short title; State Transfer of Development Rights Bank Act

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

L.1993, c. 339, § 1, eff. Dec. 27, 1993.

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).

L.1993, c. 339, § 2, eff. Dec. 27, 1993. Amended by L.2004, c. 2, § 29, eff. Sept. 25, 2004.

4:1C-51. Establishment of State Transfer of Development Rights Bank; board of directors; terms of office; quorum; duties; staffing

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.¹

¹Appropriation.

4:1C-52. Powers of the 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).

L.1993, c. 339, § 4, eff. Dec. 27, 1993. Amended by L.2004, c. 2, § 30; L.2004, c. 120, § 46, eff. Aug. 10, 2004.

4:1C-53. Establishment of Development Potential Transfer Registry; contents; annual report

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.

L.1993, c. 339, § 5, eff. Dec. 27, 1993.

4:1C-54. Sale of development potential; distribution of proceeds; certain conveyances permissible absent remuneration; considerations prior to any exchange; affect on tax-exempt bonds

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 Administration¹ 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.

L.1993, c. 339, § 6, eff. Dec. 27, 1993

¹ Abolition of the powers, functions and duties of the General Services Administration and the Office of the General Services Administrator by Reorganization Plan No. 003-1997, set out under § 52:18A-178.

4:1C-55. Report to governor

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.

L.1993, c. 339, § 7, eff. Dec. 27, 1993

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