

# SENATE, No. 1

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 29, 2004

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator ROBERT J. MARTIN**

**District 26 (Morris and Passaic)**

**Co-Sponsored by:**

**Senators Codey, Palaia, Vitale, Coniglio and Karcher**

**SYNOPSIS**

The "Highlands Water Protection and Planning Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/30/2004)**

1 AN ACT concerning the Highlands Region, creating a Highlands Water  
2 Protection and Planning Council, supplementing Title 13 of the  
3 Revised Statutes, and amending and supplementing various sections  
4 of the statutory law.

5

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

8

9 1. (New section) This act shall be known, and may be cited, as the  
10 "Highlands Water Protection and Planning Act."

11

12 2. (New section) The Legislature finds and declares that the  
13 national Highlands Region is an area that extends from northwestern  
14 Connecticut across the lower Hudson River Valley and northern New  
15 Jersey into east central Pennsylvania; that the national Highlands  
16 region has been recognized as a landscape of special significance by  
17 the United States Forest Service; that the New Jersey portion of the  
18 national Highlands Region is nearly 800,000 acres, or about 1,250  
19 miles, covering portions of 90 municipalities in seven counties; that the  
20 New Jersey Highlands Region is designated as a Special Resource  
21 Area in the State Development and Redevelopment Plan.

22 The Legislature further finds and declares that the New Jersey  
23 Highlands is an essential source of drinking water, providing clean and  
24 plentiful drinking water for one-half of the State's population,  
25 including communities beyond the New Jersey Highlands, from only  
26 13 percent of the State's land area; that the New Jersey Highlands  
27 contains other exceptional natural resources such as clean air,  
28 contiguous forest lands, wetlands, pristine watersheds, and wildlife and  
29 plant species habitats, includes many sites of historic significance, and  
30 provides abundant recreational opportunities for the citizens of the  
31 State.

32 The Legislature further finds and declares that the New Jersey  
33 Highlands provides a desirable quality of life and place where people  
34 live and work; that it is important to ensure the economic viability of  
35 communities throughout the New Jersey Highlands; that residential,  
36 commercial, and industrial development and redevelopment and  
37 economic growth in certain appropriate areas of the New Jersey  
38 Highlands is also in the best interests of all the citizens of the State,  
39 providing enumerable social, cultural, and economic benefits and  
40 opportunities.

41 The Legislature further finds and declares that there are  
42 approximately 110,000 acres of agricultural lands in active production  
43 in the New Jersey Highlands; that these lands are important resources

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

**Matter underlined thus is new matter.**

1 of the State that should be preserved; and that the agricultural industry  
2 in the region is a vital component of the economy and welfare of the  
3 State.

4 The Legislature further finds and declares that, since 1984, 65,000  
5 acres, or over 100 square miles, of the New Jersey Highlands have  
6 been lost to development; that sprawl and the pace of development in  
7 the region has dramatically increased, with the rate of loss of forested  
8 lands and wetlands more than doubling since 1995; that the New  
9 Jersey Highlands, because of its proximity to rapidly expanding  
10 suburban areas, is at serious risk of being fragmented and consumed  
11 by unplanned development; and that the existing land use and  
12 environmental regulation system cannot protect the water and natural  
13 resources of the New Jersey Highlands against the environmental  
14 impacts of sprawl development.

15 The Legislature further finds and declares that the protection of the  
16 New Jersey Highlands, because of its vital link to the future of the  
17 State's drinking water supplies and other key natural resources, is an  
18 issue of State level importance that cannot be left to the uncoordinated  
19 land use decisions of 90 municipalities, seven counties, and a myriad  
20 of private landowners; that the State should take action to delineate  
21 within the New Jersey Highlands a preservation area of exceptional  
22 natural resource value that includes watershed protection and other  
23 environmentally sensitive lands where stringent protection policies  
24 would be implemented; that a regional approach to land use planning  
25 in the preservation area should be established to replace the existing  
26 uncoordinated system; that such a new regional approach to land use  
27 planning should be complemented by increased standards more  
28 protective of the environment established by the Department of  
29 Environmental Protection for development in the preservation area of  
30 the New Jersey Highlands; that the new regional planning approach  
31 and the more stringent environmental regulatory standards should be  
32 accompanied, as a matter of wise public policy and fairness to property  
33 owners, by a strong and significant commitment by the State to fund  
34 the acquisition of exceptional natural resource value lands; and that in  
35 the light of the various pressures now arrayed against the New Jersey  
36 Highlands, these new approaches should be implemented as soon as  
37 possible.

38 The Legislature therefore determines, in the light of these findings  
39 set forth hereinabove, and with the intention of transforming them into  
40 action, that it is in the public interest of all the citizens of the State of  
41 New Jersey to enact legislation setting forth a comprehensive approach  
42 to the protection of the water and other natural resources of the New  
43 Jersey Highlands; that this comprehensive approach should consist of  
44 the identification of a preservation area of the New Jersey Highlands  
45 that would be subjected to stringent water and natural resource  
46 protection, planning, and regulation; that this comprehensive approach

1 should also consist of the establishment of a Highlands Water  
2 Protection and Planning Council charged with the preparation of a  
3 regional master plan for the preservation area in the New Jersey  
4 Highlands as well as for the region in general; that this comprehensive  
5 approach should also include the adoption by the Department of  
6 Environmental Protection of stringent standards governing major  
7 development in the Highlands preservation area; that because of the  
8 imminent peril that the ongoing rush of development poses for the  
9 New Jersey Highlands, immediate, interim standards should be  
10 imposed on the date of enactment of this act on major development in  
11 the preservation area of the New Jersey Highlands, followed  
12 subsequently by adoption by the department of appropriate rules and  
13 regulations; that it is appropriate to encourage in certain areas of the  
14 New Jersey Highlands, consistent with the State Development and  
15 Redevelopment Plan and smart growth strategies and principles,  
16 appropriate patterns of compatible residential, commercial, and  
17 industrial development, redevelopment, and economic growth, in or  
18 adjacent to areas already utilized for such purposes, and to discourage  
19 piecemeal, scattered, and inappropriate development, in order to  
20 accommodate local and regional growth and economic development  
21 in an orderly way while protecting the Highlands environment from the  
22 individual and cumulative adverse impacts thereof; that the  
23 maintenance of agricultural production and a positive agricultural  
24 business climate should be encouraged to the maximum extent possible  
25 wherever appropriate in the New Jersey Highlands; and that all such  
26 aforementioned measures should be guided, in heart, mind, and spirit,  
27 by an abiding and generously given commitment to protecting the  
28 incomparable water resources and natural beauty of the New Jersey  
29 Highlands so as to preserve them intact, in trust, forever for the  
30 pleasure, enjoyment, and use of future generations while also  
31 providing every conceivable opportunity for appropriate economic  
32 growth and development to advance the quality of life of the residents  
33 of the region and the entire State.

34

35 3. (New section) As used in this act:

36 "Application for development" means the application form and all  
37 accompanying documents required for approval of a subdivision plat,  
38 site plan, planned development, conditional use, zoning variance, or  
39 direction of the issuance of a permit pursuant to the "Municipal Land  
40 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or R.S.40:27-1 et  
41 seq., for any use, development or construction;

42 "Council" means the Highlands Water Protection and Planning  
43 Council established by section 4 of this act;

44 "Department" means the Department of Environmental Protection;

45 "Development regulation" means the same as that term is defined  
46 in section 3.1 of P.L.1975, c.291 (C.40:55D-4);

1 "Disturbance" means the placement of impervious surface, the  
2 exposure or movement of soil or bedrock, or the clearing, cutting, or  
3 removing of vegetation;

4 "Environmental land use or water permit" means a permit, approval,  
5 or other authorization issued by the Department of Environmental  
6 Protection pursuant to the "Freshwater Wetlands Protection Act,"  
7 P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water Supply Management  
8 Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the "Water Pollution  
9 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), "The Realty  
10 Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199  
11 (C.58:11-23 et seq.), the "Water Quality Planning Act," P.L.1977,  
12 c.75 (C.58:11A-1 et seq.), the "Safe Drinking Water Act," P.L.1977,  
13 c.224 (C.58:12A-1 et seq.), or the "Flood Hazard Area Control Act,"  
14 P.L.1962, c.19 (C.58:16A-50 et seq.); or an approval for an individual  
15 subsurface sewage disposal system from a delegated local health  
16 agency pursuant to the "County Environmental Health Act," P.L.1977,  
17 c.443 (C.26:3A2-21 et al.);

18 "Highlands open waters" means all springs, streams, wetlands, and  
19 bodies of surface water, whether natural or artificial, located wholly  
20 or partially within the boundaries of the Highlands Region;

21 "Highlands Region" means that region so designated by subsection  
22 a. of section 7 of this act;

23 "Impervious surface" means any structure, surface, or improvement  
24 that reduces or prevents absorption of stormwater into land, and  
25 includes porous paving, paver blocks, gravel, crushed stone, decks,  
26 patios, elevated structures, and other similar structures, surfaces, or  
27 improvements;

28 "Local government unit" means a municipality, county, or other  
29 political subdivision of the State, or any agency, board, commission,  
30 utilities authority or other authority, or other entity thereof;

31 "Major development" means any non-residential development,  
32 whether or not it also qualifies as a development as defined in the  
33 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.); any  
34 residential development, whether or not it also qualifies as a  
35 development as defined in the "Municipal Land Use Law," P.L.1975,  
36 c.291 (C.40:55D-1 et seq.), that provides for the ultimate disturbance  
37 of one acre or more of land or an increase in impervious surface of  
38 one-quarter acre or more; or any residential development, whether or  
39 not it also qualifies as a development as defined in the "Municipal  
40 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), that requires  
41 an environmental land use or water permit issued by the Department  
42 of Environmental Protection but which does not result in the ultimate  
43 disturbance of one acre or more of land or an increase in impervious  
44 surface by one-quarter acre or more;

45 "Planning area" means that portion of the Highlands Region not  
46 included within the preservation area;

1 "Preservation area" means that portion of the Highlands Region so  
2 designated by subsection b. of section 7 of this act;

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

5 "Regional master plan" means the Highlands regional master plan  
6 or any revision thereof adopted by the council pursuant to section 8 of  
7 this act;

8 "State entity" means any State department, agency, board,  
9 commission, or other entity, district water supply commission,  
10 independent State authority or commission, or bi-state entity;

11 "State Development and Redevelopment Plan" means the State  
12 Development and Redevelopment Plan adopted pursuant to P.L.1985,  
13 c.398 (C.52:18A-196 et al.); and

14 "Waters of the Highlands" means all springs, streams, and bodies of  
15 surface or ground water, whether natural or artificial, located wholly  
16 or partially within the boundaries of the Highlands Region.

17

18 4. (New section) There is hereby established a public body  
19 corporate and politic, with corporate succession, to be known as the  
20 "Highlands Water Protection and Planning Council." The council shall  
21 constitute a political subdivision of the State established as an  
22 instrumentality exercising public and essential governmental functions,  
23 and the exercise by the council of the powers and duties conferred by  
24 this act shall be deemed and held to be an essential governmental  
25 function of the State. For the purpose of complying with the  
26 provisions of Article V, Section IV, paragraph 1 of the New Jersey  
27 Constitution, the council is hereby allocated within the Department of  
28 Environmental Protection, but, notwithstanding that allocation, the  
29 council shall be independent of any supervision or control by the  
30 department or by the commissioner or any officer or employee thereof.

31

32 5. (New section) a. The council shall consist of 15 voting  
33 members to be appointed and qualified as follows:

34 (1) Eight residents of the counties of Bergen, Hunterdon, Morris,  
35 Passaic, Somerset, Sussex, or Warren, appointed by the Governor,  
36 with the advice and consent of the Senate, (a) of whom five shall be  
37 municipal officials holding elective office at the time of appointment  
38 and three shall be county officials holding elective office at the time of  
39 appointment, and (b) among whom shall be at least one resident from  
40 each of the counties of Bergen, Hunterdon, Morris, Passaic, Somerset,  
41 Sussex, and Warren; and

42 (2) Seven residents of the State, appointed by the Governor, with  
43 the advice and consent of the Senate.

44 b. (1) Council members shall serve for terms of five years;  
45 provided, however, that of the members first appointed, five shall  
46 serve a term of three years, five shall serve a term of four years, and

1 five shall serve a term of five years.

2 (2) Each member shall serve for the term of the appointment and  
3 until a successor shall have been appointed and qualified. Any vacancy  
4 shall be filled in the same manner as the original appointment for the  
5 unexpired term only.

6 c. Any member of the council may be removed by the Governor,  
7 for cause, after a public hearing.

8 d. Each member of the council, before entering upon the member's  
9 duties, shall take and subscribe an oath to perform the duties of the  
10 office faithfully, impartially, and justly to the best of the member's  
11 ability, in addition to any oath that may be required by R.S.41:1-1 et  
12 seq. A record of the oath shall be filed in the Office of the Secretary  
13 of State.

14 e. The members of the council shall serve without compensation,  
15 but the council may, within the limits or funds appropriated or  
16 otherwise made available for such purposes, reimburse its members for  
17 necessary expenses incurred in the discharge of their official duties.

18 f. The powers of the council shall be vested in the members thereof  
19 in office. A majority of the total authorized membership of the council  
20 shall constitute a quorum except that no action may be taken by the  
21 council except upon the affirmative vote of a majority of the quorum.  
22 No alternate or designee of any council member shall exercise any  
23 power to vote on any matter pending before the council.

24 g. The Governor shall designate one of the members of the council  
25 as chairperson. The council shall appoint an executive director, who  
26 shall be the chief administrative officer thereof. The executive director  
27 shall serve at the pleasure of the council, and shall be a person  
28 qualified by training and experience to perform the duties of the office.

29 h. The members and staff of the council shall be subject to the  
30 "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-  
31 12 et seq.).

32 i. The council shall be subject to the provisions of the "Open Public  
33 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

34 j. A true copy of the minutes of every meeting of the council shall  
35 be prepared and forthwith delivered to the Governor. No action taken  
36 at a meeting by the council shall have force or effect until 10 days,  
37 exclusive of Saturdays, Sundays, and public holidays, after a copy of  
38 the minutes shall have been so delivered; provided, however, that no  
39 action taken with respect to the adoption of the regional master plan,  
40 or any portion or revision thereof, shall have force or effect until 30  
41 days, exclusive of Saturdays, Sundays, and public holidays, after a  
42 copy of the minutes shall have been so delivered. If, in the 10-day  
43 period, or 30-day period, as the case may be, the Governor returns the  
44 copy of the minutes with a veto of any action taken by the council at  
45 the meeting, the action shall be null and void and of no force and  
46 effect.

- 1       6. (New section) The council shall have the following powers,  
2 duties, and responsibilities, in addition to those prescribed elsewhere  
3 in this act:
- 4       a. To adopt and from time to time amend and repeal suitable  
5 bylaws for the management of its affairs;
- 6       b. To adopt and use an official seal and alter it at the council's  
7 pleasure;
- 8       c. To maintain an office at such place or places in the Highlands  
9 Region as it may designate;
- 10      d. To sue and be sued in its own name;
- 11      e. To appoint, retain and employ, without regard to the provisions  
12 of Title 11A of the New Jersey Statutes but within the limits of funds  
13 appropriated or otherwise made available for those purposes, such  
14 officers, employees, agents, and experts as it may require, and to  
15 determine the qualifications, terms of office, duties, services, and  
16 compensation therefor;
- 17      f. To apply for, receive, and accept, from any federal, State, or  
18 other public or private source, grants or loans for, or in aid of, the  
19 council's authorized purposes, or the in the carrying out of the  
20 council's powers, duties, and responsibilities;
- 21      g. To enter into any and all agreements or contracts, execute any  
22 and all instruments, and do and perform any and all acts or things  
23 necessary, convenient, or desirable for the purposes of the council or  
24 to carry out any power, duty, or responsibility expressly given in this  
25 act;
- 26      h. To call to its assistance and avail itself of the services of such  
27 employees of any State entity or local government unit as may be  
28 required and made available for such purposes;
- 29      i. To adopt a regional master plan for the Highlands Region as  
30 provided pursuant to section 8 of this act;
- 31      j. To appoint advisory boards, commissions, councils, or panels to  
32 assist in its activities, including but not limited to a municipal advisory  
33 council consisting of mayors, municipal council members, or other  
34 representatives of municipalities located in the Highlands Region;
- 35      k. To authorize, if deemed useful, the establishment by appropriate  
36 persons or organizations of a nonprofit organization or organizations  
37 exempt from taxation pursuant to section 501 (c)(3) of the federal  
38 Internal Revenue Code of 1986, 26 U.S.C.s.501 (c)(3), for the  
39 purposes of assisting the council in furthering the purposes of this act  
40 and the regional master plan;
- 41      l. To solicit and consider public input and comment on the council's  
42 activities, the regional master plan, and other issues and matters of  
43 importance in the Highlands Region by periodically holding public  
44 hearings or conferences and providing other opportunities for such  
45 input and comment by interested parties;
- 46      m. To conduct examinations and investigations, to hear testimony,

- 1 taken under oath at public or private hearings, on any material matter,  
2 and to require attendance of witnesses and the production of books  
3 and papers;
- 4 n. To prepare and transmit to the Commissioner of Environmental  
5 Protection such recommendations for water quality and water supply  
6 standards for surface and ground waters in the Highlands Region, or  
7 in tributaries and watersheds thereof, and for other environmental  
8 protection standards pertaining to the lands and natural resources of  
9 the Highlands Region, as the council deems appropriate;
- 10 o. To identify and designate in the regional master plan special  
11 areas in the preservation area within which development shall not  
12 occur in order to protect water resources and environmentally  
13 sensitive lands while recognizing the need to provide just  
14 compensation to the owners of those lands when appropriate, whether  
15 through acquisition, transfer of development rights programs, or other  
16 means or strategies;
- 17 p. To identify any lands in which the public acquisition of a fee  
18 simple or lesser interest therein is necessary or desirable in order to  
19 ensure the preservation thereof, or to provide sites for public  
20 recreation, as well as any lands the beneficial use of which are so  
21 adversely affected by the restrictions imposed pursuant to this act as  
22 to require a guarantee of just compensation therefor, and to transmit  
23 a list of those lands to the Commissioner of Environmental Protection,  
24 affected local government units, and appropriate federal agencies;
- 25 q. To develop model land use ordinances and other development  
26 regulations, for consideration and possible adoption by municipalities  
27 in the planning area, that would help protect the environment,  
28 including, but not limited to, ordinances and other development  
29 regulations pertaining to steep slopes, forest cover, wellhead and  
30 water supply protection, impervious surface, and clustering; and to  
31 provide guidance and technical assistance in connection therewith to  
32 those municipalities;
- 33 r. To identify and designate, and accept petitions from  
34 municipalities to designate, special critical environmental areas in high  
35 resource value lands in the planning area, and develop voluntary  
36 standards and guidelines for protection of such special areas for  
37 possible implementation by those municipalities;
- 38 s. To comment upon any application for development before a  
39 local government unit, on the adoption of any master plan,  
40 development regulation, or other regulation by a local government  
41 unit, or on the enforcement by a local government unit of any  
42 development regulation or other regulation, which power shall be in  
43 addition to any other review, oversight, or intervention powers of the  
44 council prescribed by this act;
- 45 t. To work with interested municipalities to enter into agreements  
46 to establish, where appropriate, capacity-based development densities,

1 including, but not limited to, appropriate higher densities to support  
2 transit villages or in centers designated by the State Development and  
3 Redevelopment Plan and endorsed by the State Planning Commission;

4 u. To establish and charge, in accordance with a fee schedule to be  
5 set forth by rule or regulation adopted pursuant to the "Administrative  
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable fees  
7 for services performed relating to the review of applications for  
8 development and other applications filed with or otherwise brought  
9 before the council, or for other services, as may be required by this act  
10 or the regional master plan; and

11 v. To prepare, adopt, amend, or repeal, pursuant to the provisions  
12 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
13 et seq.), such rules and regulations as may be necessary in order to  
14 exercise its powers and perform its duties and responsibilities under  
15 the provisions of this act.

16

17 7. (New section) a. The Highlands Region shall consist of all that  
18 area within the boundaries of the following municipalities:

19 (1) in Bergen County: Mahwah, and Oakland;

20 (2) in Hunterdon County: Alexandria, Bethlehem, Bloomsbury,  
21 Califon, Clinton Town, Clinton Township, Glen Gardner, Hampton,  
22 High Bridge, Holland, Lebanon Boro, Lebanon Township, Milford,  
23 Tewksbury, and Union;

24 (3) in Morris County: Boonton Town, Boonton Township, Butler,  
25 Chester Boro, Chester Township, Denville, Dover, Hanover, Harding,  
26 Jefferson, Kinnelon, Mendham Boro, Mendham Township, Mine Hill,  
27 Montville, Morris Plains, Morris Township, Morristown, Mount  
28 Arlington, Mount Olive, Mountain Lakes, Netcong, Parsippany-Troy  
29 Hills, Pequannock, Randolph, Riverdale, Rockaway Boro, Rockaway  
30 Township, Roxbury, Victory Gardens, Washington, and Wharton;

31 (4) in Passaic County: Bloomingdale, Pompton Lakes, Ringwood,  
32 Wanaque, and West Milford;

33 (5) in Somerset County: Bernards, Bernardsville, Far Hills, and  
34 Peapack-Gladstone;

35 (6) in Sussex County: Andover Boro, Andover Township, Byram,  
36 Franklin, Green, Hamburg, Hardyston, Hopatcong, Lafayette,  
37 Ogdensburg, Sparta, Stanhope, and Vernon; and

38 (7) in Warren County: Allamuchy, Alpha, Belvidere, Franklin,  
39 Frelinghuysen, Greenwich, Hackettstown, Harmony, Hope,  
40 Independence, Liberty, Lopatcong, Mansfield, Oxford, Phillipsburg,  
41 Pohatcong, Washington Boro, Washington Township, and White.

42 b. The preservation area shall consist of that area described by the  
43 Highlands Task Force, established by Executive Order No. 70 of 2003,  
44 and based upon natural resource data assembled by the United States  
45 Forest Service, Rutgers, The State University, and the New Jersey  
46 Water Supply Authority, which is to be translated, allowing for

1 reasonable variations, by the Highlands Task Force with the assistance  
2 of Rutgers, The State University, the Department of Environmental  
3 Protection, and other appropriate entities, to appropriate and nearest  
4 practicable, on-the-ground, and easily identified reference points, such  
5 as, but not limited to, road descriptions, survey lines, and municipal  
6 boundaries, by May 1, 2004 or as soon thereafter as may be possible.  
7 This narrative description of the preservation area shall be enacted into  
8 law.

9 c. The planning area shall consist of all that area of the Highlands  
10 Region not within the preservation area.

11

12 8. (New section) The council shall, within 18 months after the date  
13 of its first meeting, and after holding at least five public hearings in  
14 various locations in the Highlands Region and at least one public  
15 hearing in Trenton, prepare and adopt a regional master plan for the  
16 Highlands Region. The Highlands regional master plan shall be  
17 periodically revised and updated at least once every five years, after  
18 public hearings.

19

20 9. (New section) a. During the preparation of the regional master  
21 plan or any revision thereof, the council shall consult with the  
22 Department of Environmental Protection, the Department of  
23 Community Affairs, the State Planning Commission, the Department  
24 of Agriculture, the State Agriculture and Development Committee,  
25 and appropriate officials of local governments and State, regional, and  
26 federal agencies with jurisdiction over lands, waters, and natural  
27 resources within the Highlands Region, with interested professional,  
28 scientific, and citizen organizations, and with any advisory groups that  
29 may be established by the council. The council shall review all  
30 relevant federal, State, and private studies of the Highlands Region,  
31 the State Development and Redevelopment Plan, municipal, county,  
32 and regional plans, applicable federal and State laws and rules and  
33 regulations, and other pertinent information on the Highlands Region.

34 b. Prior to adoption of, and in preparing, the regional master plan,  
35 the council may, in conjunction with municipalities in the preservation  
36 area, identify areas in which redevelopment shall be encouraged in  
37 order to promote the economic well-being of the municipality,  
38 provided that the redevelopment conforms to the goals of the  
39 preservation area and this act and with the rules and regulations  
40 adopted by the Department of Environmental Protection pursuant to  
41 sections 32 and 33 of this act.

42 c. Upon adoption of the regional master plan or any revision  
43 thereof, copies thereof shall be transmitted to the Governor and to the  
44 Legislature.

45

46 10. (New section) a. The goal of the regional master plan with

1 respect to the entire Highlands Region shall be to protect and enhance  
2 the significant values of the resources thereof in a manner which is  
3 consistent with the purposes and provisions of this act.

4 b. The goals of the regional master plan with respect to the  
5 preservation area shall be to:

6 (1) protect, restore, and enhance the quality and quantity of surface  
7 and ground waters therein;

8 (2) preserve extensive and, to the maximum extent possible,  
9 contiguous areas of land in its natural state, thereby ensuring the  
10 continuation of a Highlands environment which contains the unique  
11 and significant natural, scenic, and other resources representative of  
12 the Highlands Region;

13 (3) protect the natural, scenic, and other resources of the Highlands  
14 Region, including but not limited to contiguous forests, wetlands,  
15 vegetated stream corridors, steep slopes, and critical habitat for fauna  
16 and flora;

17 (4) preserve farmland and historic sites and other historic resources;

18 (5) promote compatible agricultural, horticultural, recreational, and  
19 cultural uses and opportunities within the framework of protecting the  
20 Highlands environment; and

21 (6) prohibit or limit to the maximum extent possible construction or  
22 development which is incompatible with preservation of this unique  
23 area.

24 c. The goals of the regional master plan with respect to the  
25 planning area shall be to:

26 (1) protect, restore, and enhance the quality and quantity of surface  
27 and ground waters therein;

28 (2) preserve to the maximum extent possible any environmentally  
29 sensitive lands and other lands needed for recreation and conservation  
30 purposes;

31 (3) protect and maintain the essential character of the Highlands  
32 environment;

33 (4) preserve farmland and historic sites and other historic resources;

34 (5) promote the continuation and expansion of agricultural,  
35 horticultural, recreational, and cultural uses and opportunities; and

36 (6) encourage, consistent with the State Development and  
37 Redevelopment Plan and smart growth strategies and principles,  
38 appropriate patterns of compatible residential, commercial, and  
39 industrial development, redevelopment, and economic growth, in or  
40 adjacent to areas already utilized for such purposes, and discourage  
41 piecemeal, scattered, and inappropriate development, in order to  
42 accommodate local and regional growth and economic development  
43 in an orderly way while protecting the Highlands environment from the  
44 individual and cumulative adverse impacts thereof.

45

46 11. (New section) The regional master plan shall include, but

1 need not necessarily be limited to:

2 a. A resource assessment which:

3 (1) determines the amount and type of human development and  
4 activity which the ecosystem of the Highlands Region can sustain  
5 while still maintaining the overall ecological values thereof, with  
6 special reference to surface and ground water quality and supply;  
7 endangered and threatened animals, plants, and biotic communities;  
8 ecological factors relating to the protection and enhancement of  
9 agricultural production or activity; air quality; and other appropriate  
10 considerations affecting the ecological integrity of the Highlands  
11 Region;

12 (2) includes an assessment of scenic, aesthetic, cultural, historic,  
13 open space, farm land, and outdoor recreation resources of the region,  
14 together with a determination of overall policies required to maintain  
15 and enhance such resources; and

16 (3) includes an assessment of opportunities for appropriate  
17 economic growth, development, and redevelopment which shall  
18 include consideration of public investment priorities, infrastructure  
19 investments, economic development, revitalization, housing,  
20 transportation, energy resources, waste management, recycling,  
21 brownfields, and design such as mixed-use, compact design, and  
22 transit villages.

23 b. A financial component, together with a cash flow timetable  
24 which:

25 (1) details the cost of implementing the regional master plan,  
26 including, but not limited to, payments in lieu-of-taxes, acquisition,  
27 within five years and within 10 years after the date of enactment of this  
28 act, of fee simple or other interests in lands for preservation or  
29 recreation and conservation purposes, compensation guarantees,  
30 general administrative costs, and any anticipated extraordinary or  
31 continuing costs; and

32 (2) details the sources of revenue for covering such costs,  
33 including, but not limited to, grants, donations, and loans from local,  
34 State, and federal departments and agencies, and from the private  
35 sector.

36 c. A component to provide for the maximum feasible local  
37 government and public input into the council's operations, which shall  
38 include a framework for developing policies for the planning area in  
39 conjunction with those local government units with jurisdiction over  
40 those lands who choose to conform to the regional master plan.

41 d. A coordination and consistency component which details the  
42 ways in which local, State, and federal programs and policies may best  
43 be coordinated to promote the goals, purposes, policies, and  
44 provisions of the regional master plan, and which details how land,  
45 water, and structures managed by governmental or nongovernmental  
46 entities in the public interest within the Highlands Region may be

1 integrated into the regional master plan.

2

3 12. (New section) In addition to the contents of the regional  
4 master plan described in section 11 of this act, the plan shall also  
5 include, with respect to the preservation area, a land use capability  
6 map and a comprehensive statement of policies for planning and  
7 managing the development and use of land in the preservation area,  
8 which shall be based upon, comply with, and implement the  
9 environmental standards set forth in section 31 of this act and as  
10 adopted by the Department of Environmental Protection pursuant to  
11 sections 32 through 33 of this act.

12 These policies shall include provision for implementing the regional  
13 master plan by the State and local government units in the preservation  
14 area in a manner that will ensure the continued, uniform, and  
15 consistent protection of the Highlands Region in accordance with the  
16 goals, purposes, policies, and provisions of this act, and shall include:

17 a. a preservation zone element that identifies zones within the  
18 preservation area where development shall not occur in order to  
19 protect water resources and environmentally sensitive lands that shall  
20 be permanently preserved through a variety of tools, including  
21 acquisition and transfer of development rights; and

22 b. minimum standards governing municipal and county master  
23 planning, development regulations, and other regulations concerning  
24 the development and use of land in the preservation area, including,  
25 but not limited to, standards for minimum lot sizes and stream  
26 setbacks, construction on steep slopes, maximum appropriate  
27 population densities, and regulated or prohibited uses for specific  
28 portions of the preservation area.

29

30 13. (New section) a. The council shall develop and implement a  
31 transfer of development rights program for the Highlands Region  
32 consistent with any transfer of development rights program created  
33 otherwise by law.

34 b. (1) The council may use the State Transfer of Development  
35 Rights Bank established pursuant to section 3 of P.L.1993, c.339  
36 (C.4:1C-51) for the purposes of facilitating the transfer of  
37 development potential in accordance with subsection a. of this section  
38 and the regional master plan. The council may also establish a  
39 development transfer bank for such purposes.

40 (2) At the request of the council, the Department of Banking and  
41 Insurance, the State Transfer of Developments Right Bank, the State  
42 Agriculture Development Committee, and the Pinelands Development  
43 Credit Bank shall provide technical assistance to the council in  
44 establishing and operating a development transfer bank as authorized  
45 pursuant to paragraph (1) of this subsection.

46 (c) The bank shall operate in accordance with provisions of general

1 law authorizing the creation of development transfer banks by  
2 municipalities and counties.

3

4 14. (New section) a. Within six months after the date of adoption  
5 of the regional master plan or any revision thereof, each municipality  
6 located wholly or partially in the preservation area shall submit to the  
7 council such revisions of the municipal master plan and development  
8 regulations, as applicable to the development and use of land in the  
9 preservation area, as may be necessary in order to conform them with  
10 the goals, requirements, and provisions of the regional master plan.  
11 After receiving and reviewing the revisions, the council shall approve,  
12 reject, or approve with conditions the revised plan and development  
13 regulations, as it deems appropriate, after public hearing, within 60  
14 days after the date of submission thereof.

15 Upon rejecting or conditionally approving any such revised plan or  
16 development regulations, the council shall identify such changes  
17 therein that it deems necessary for council approval thereof, and the  
18 relevant municipality shall adopt and enforce the plan or development  
19 regulations as so changed.

20 b. Within six months after the date of adoption of the regional  
21 master plan or any revision thereof, each county located wholly or  
22 partially in the preservation area shall submit to the council such  
23 revisions of the county master plan and associated regulations, as  
24 applicable to the development and use of land in the preservation area,  
25 as may be necessary in order to conform them with the goals,  
26 requirements, and provisions of the regional master plan. After  
27 receiving and reviewing the revisions, the council shall approve, reject,  
28 or approve with conditions those revised plans and associated  
29 regulations, as it deems appropriate, after public hearing, within 60  
30 days after the date of submission thereof.

31 Upon rejecting or conditionally approving any such revised plan or  
32 associated regulations, the council shall identify such changes therein  
33 that it deems necessary for council approval thereof, and the relevant  
34 county shall adopt and enforce the plan or associated regulations as so  
35 changed.

36 c. Any approval of an application for development, or use of land,  
37 in the preservation area granted by any local government unit in  
38 violation of the regional master plan or an approved revised municipal  
39 or county master plan, development regulations, or other regulations  
40 pursuant to this act shall be null and void and of no force and effect at  
41 law or equity.

42 d. In the event that any municipality or county fails to adopt or  
43 enforce an approved revised master plan, development regulations, or  
44 other regulations, as the case may be, including any condition thereto  
45 imposed by the council, as required pursuant to subsections a. or b. of  
46 this section, the council shall adopt and enforce such rules and

1 regulations as may be necessary to implement the minimum standards  
2 contained in the regional master plan as applicable to any municipality  
3 or county within the preservation area. If any municipality or county  
4 fails to adopt or enforce an approved revised master plan, development  
5 regulations, or other regulations, as the case may be, including any  
6 condition thereto imposed by the council, as required pursuant to  
7 subsections a. or b. of this section, the council shall have all local  
8 enforcement authority provided pursuant to the "Municipal Land Use  
9 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) and R.S.40:27-1 et seq.,  
10 as well as the authority to issue stop construction orders, as may be  
11 necessary to implement the provisions of this act, any rules and  
12 regulations adopted pursuant thereto, and the requirements and  
13 provisions of the regional master plan.

14 e. A municipality or county may adopt revisions to its master plan,  
15 development regulations, or other regulations for the purposes of this  
16 section that are stricter than the minimum necessary to obtain approval  
17 of conformance with the regional master plan.

18

19 15. (New section) a. For any municipality located wholly in the  
20 planning area or for any portion of a municipality lying within the  
21 planning area, the municipality may, by ordinance, petition the council  
22 of its intention to revise its master plan and development regulations,  
23 as applicable to the development and use of land in the planning area,  
24 to conform with the goals, requirements, and provisions of the  
25 regional master plan.

26 The municipality shall proceed in revising its master plan and  
27 development regulations in accordance with the framework adopted  
28 by the council pursuant to subsection a. of section 14 of this act.

29 After receiving and reviewing those revisions, the council shall  
30 approve, reject, or approve with conditions the revised plan and  
31 development regulations, as it deems appropriate, after public hearing,  
32 within 60 days after the date of submission thereof.

33 b. Upon rejecting or conditionally approving any such revised plan  
34 or development regulations, the council shall identify such changes  
35 therein that it deems necessary for council approval thereof, and the  
36 municipality may adopt and enforce the plan or development  
37 regulations as so changed in order for them to be deemed approved in  
38 conformance with the regional master plan.

39 c. Any municipality approved by the council to be in conformance  
40 with the regional master plan pursuant to this section shall be entitled  
41 to any financial or other assistance or incentives received by a  
42 municipality from the State as a benefit or result of obtaining council  
43 approval pursuant to section 14 of this act.

44 d. Upon the commencement of each reexamination by the  
45 municipality of its master plan and development regulations as  
46 required pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), the

1 municipality shall so notify the council and, thereafter, submit to the  
2 council the draft revision of its master plan and development  
3 regulations for review, by the council, of conformance with the  
4 regional master plan.

5 If, after conducting the reexamination, the municipality does not  
6 resubmit to the council its master plan and development regulations as  
7 they pertain to the planning area and obtain reapproval thereof from  
8 the council in accordance with this section, or if the council finds the  
9 reexamined master plan not to be in conformance with the regional  
10 master plan, the council may require the municipality to reimburse the  
11 council or the State, as appropriate, in whole or in part for any  
12 financial or other assistance or incentives received by the municipality  
13 from the State as a benefit or result of obtaining council approval  
14 pursuant to this section.

15 e. A municipality may adopt revisions to its master plan or  
16 development regulations for the purposes of this section that are  
17 stricter than the minimum necessary to obtain approval of conformance  
18 with the regional master plan.

19 f. Each county with lands in the planning area may, by ordinance  
20 or resolution, as appropriate, petition the council of its intention to  
21 revise its master plan and associated regulations, as applicable to the  
22 development and use of land in the planning area, to conform with the  
23 goals, requirements, and provisions of the regional master plan.

24 The county shall proceed in revising its master plan and associated  
25 regulations in accordance with the framework adopted by the council  
26 pursuant to subsection b. of section 14 of this act.

27 After receiving and reviewing those revisions, the council shall  
28 approve, reject, or approve with conditions the revised plan and  
29 associated regulations, as it deems appropriate, after public hearing,  
30 within 60 days after the date of submission thereof.

31 g. Upon rejecting or conditionally approving any such revised plan  
32 or associated regulations, the council shall identify such changes  
33 therein that it deems necessary for council approval thereof, and the  
34 county may adopt and enforce the plan or associated regulations as so  
35 changed in order for them to be deemed approved in conformance with  
36 the regional master plan.

37 h. Any county approved by the council to be in conformance with  
38 the regional master plan pursuant to this section shall be entitled to  
39 any financial or other assistance or incentives received by a county  
40 from the State as a benefit or result of obtaining council approval  
41 pursuant to section 14 of this act.

42

43 16. (New section) a. For the purposes of subsection a. of section  
44 37 of P.L.1975, c.291 (C.40:55D-49), any amendments made to a  
45 major subdivision or a site plan ordinance pursuant to this act to  
46 conform it to the regional master plan shall be construed to relate to

1 public health and safety for any major development that has received  
2 preliminary approval prior to the amendment of a major subdivision or  
3 site plan ordinance pursuant to this act. An amendment made to a  
4 major subdivision or site plan ordinance pursuant to this act shall not  
5 be construed to relate to public health and safety if the major  
6 development is a residential development that requires an  
7 environmental land use or water permit but which does not result in  
8 the ultimate disturbance of one acre or more of land or an increase in  
9 impervious surface by one-quarter acre or more.

10 b. (1) Any final approval of a major development which is  
11 outstanding upon the adoption by a municipality of amendments to its  
12 development regulations pursuant to this act to conform those  
13 development regulations to the regional master plan, shall be reviewed  
14 by the municipality for consistency with the regional master plan. In  
15 the event that the final approval is not consistent with the regional  
16 master plan, any rights otherwise conferred by the final approval shall  
17 expire. The provisions of this subsection shall apply whether the final  
18 approval involves a site plan, major subdivision, or general  
19 development plan pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

20 This paragraph shall not apply to any major development which is  
21 a residential development that requires an environmental land use or  
22 water permit but which does not result in the ultimate disturbance of  
23 one acre or more of land or an increase in impervious surface by  
24 one-quarter acre or more.

25 (2) Notwithstanding any provision of paragraph (1) of this  
26 subsection to the contrary, any major development for which, at the  
27 time of the adoption of amendments to the municipal development  
28 regulations pursuant to this act to conform them to the regional master  
29 plan, a construction permit has been issued, may proceed in  
30 accordance with the terms of the relevant approvals.

31  
32 17. (New section) a. The council may prepare and distribute  
33 suggested guidelines for the location and construction of capital  
34 projects by State entities or local government units within the  
35 Highlands Region.

36 b. Within the preservation area, any capital or other project of a  
37 State entity or local government unit that involves the ultimate  
38 disturbance of two acres or more of land or an increase in impervious  
39 surface by one acre or more shall be submitted to the council for  
40 review. The council shall establish procedures for conducting such  
41 reviews and shall have the power to approve, approve with conditions,  
42 or disapprove the project. No such project shall proceed without the  
43 approval of the council; provided that, in the case of a project of a  
44 State entity, if the council disapproves the project, the head of the  
45 appropriate principal department of State government with primary  
46 responsibility for the project may override the council's disapproval

1 upon making a written finding, which shall be submitted to the council  
2 and the Governor, that the project is necessary for public health,  
3 safety, or welfare and including with that finding a factual basis and  
4 explanation in support thereof. In the case of a project of an  
5 independent State authority or commission or a bi-state entity, any  
6 such finding shall be made by the Governor or such other State  
7 governmental official as the Governor may designate for that purpose.

8 c. Within the planning area, any capital or other project of a State  
9 entity or local government unit that provides for the ultimate  
10 disturbance of two acres or more of land or an increase in impervious  
11 surface by one acre or more shall be submitted to the council for a  
12 nonbinding review and comment. The council shall establish  
13 procedures for conducting such reviews. The failure of the council to  
14 act expeditiously on any such review pursuant to this subsection shall  
15 not be cause for delay of the project, and the project may proceed  
16 whether or not the council has conducted the review.

17  
18 18. (New section) a. Subsequent to adoption of the regional  
19 master plan, the council may review, within 15 days after any final  
20 local government unit approval thereof, any application for  
21 development in the preservation area. Upon determining to exercise  
22 that authority, the council shall transmit, by certified mail, written  
23 notice thereof to the person who submitted the application. The  
24 council shall, after public hearing thereon, approve, reject, or approve  
25 with conditions any such application within 60 days after transmitting  
26 the notice; provided, however, that an application shall not be rejected  
27 or conditionally approved unless the council determines that the  
28 development does not conform with the regional master plan, as  
29 applicable to the local government unit wherein the development is  
30 located, or that the development could result in substantial impairment  
31 of the resources of the Highlands Region. Such approval, rejection,  
32 or conditional approval shall be binding upon the person who  
33 submitted the application, shall supersede any local government unit  
34 approval of any such development, and shall be subject only to judicial  
35 review as provided in section 29 of this act.

36 b. Every person submitting an application for development in the  
37 preservation area shall be required to provide a notice of the  
38 application to the council in accordance with such procedures therefor  
39 as shall be established by the council.

40 c. Notwithstanding any provision of subsections a. or b. of this  
41 section to the contrary, for any municipality or county that has  
42 adopted an approved revised master plan, development regulations, or  
43 other regulations, as the case may be, including any condition thereto  
44 imposed by the council, the requirements of this section shall apply  
45 only to applications for development that provide for the ultimate  
46 disturbance of two acres or more of land or an increase in impervious

1 surface by one acre or more. The council may provide, pursuant to  
2 subsection d. of section 14 of this act, that the requirements of this  
3 section apply to any application for development within the  
4 preservation area in any municipality or county that fails to adopt or  
5 enforce an approved revised master plan, development regulations, or  
6 other regulations, as the case may be, including any condition thereto  
7 imposed by the council.

8 d. Any member of the public may request the council to consider  
9 reviewing an application for development in the preservation area as  
10 provided in this section.

11

12 19. (New section) a. Any municipality in the Highlands Region  
13 whose municipal master plan and development regulations, and any  
14 county in the Highlands Region whose county master plan and  
15 associated regulations, have been approved by the council to be in  
16 conformance with the regional master plan in accordance with sections  
17 14 or 15 of this act shall qualify for State aid, planning assistance,  
18 technical assistance, and other benefits and incentives that may be  
19 awarded or provided by the State to municipalities and counties which  
20 have received plan endorsement pursuant to the "State Planning Act,"  
21 P.L.1985, c.398 (C.52:18A-196 et al.) or which otherwise practice or  
22 implement smart growth strategies and principles. Any such  
23 municipality or county shall also qualify for any State aid that may be  
24 provided for smart growth projects.

25 b. The council may make available grants and other financial and  
26 technical assistance to municipalities and counties for any revision of  
27 their master plans, development regulations, or other regulations  
28 which is designed to bring those plans, development regulations, or  
29 other regulations into conformance with the regional master plan or  
30 for implementation of a transfer of development rights program  
31 pursuant to this act. The council may make the grants and other  
32 financial assistance from any State, federal, or other funds that may be  
33 appropriated or otherwise made available to it for that purpose.

34

35 20. (New section) a. Every municipality located wholly or  
36 partially in the preservation area shall be entitled to State aid to  
37 compensate for any decrease in the aggregate amount of property tax  
38 revenues derived from the taxation of real property in that portion of  
39 the municipality located in the preservation area that is directly  
40 attributable to the implementation of this act. The council shall  
41 establish methods and procedures for calculating the aggregate true  
42 value of the real property and the aggregate amount of property tax  
43 revenues derived therefrom in each municipality in the preservation  
44 area in the year prior to the enactment of this act, and for calculating,  
45 for each year after the enactment of this act, any decrease in the  
46 aggregate true value of the real property, and in the aggregate amount

1 of property tax revenues derived therefrom, that is directly attributable  
2 to the implementation of this act. The council shall annually calculate  
3 the amount to which each municipality is entitled pursuant to this  
4 section, and shall certify and transmit such amounts to the State  
5 Treasurer and to the Director of the Division of Local Government  
6 Services in the Department of Community Affairs.

7 b. Commencing July 1 next following two years after the date of  
8 enactment of this act, or at such other date as may be established by  
9 the council, no municipality shall receive any State aid made available  
10 pursuant to this section unless the municipality's master plan and  
11 development regulations, as applicable to the preservation area, have  
12 been approved by the council to be in conformance with the regional  
13 master plan pursuant to section 14 of this act.

14 c. The State Treasurer shall include in the State Treasurer's annual  
15 budget request for State aid the amounts certified by the council  
16 pursuant to subsection a of this section. The State Treasurer shall pay,  
17 from monies appropriated for the purposes of this section, to each  
18 municipality the amount of State aid appropriated therefor in a manner  
19 and pursuant to a schedule set forth in the rules and regulations  
20 adopted pursuant subsection d. of this section.

21 d. The State Treasurer and the Director of the Division of Local  
22 Government Services, in consultation with the council, shall adopt,  
23 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
24 (C.52:14B-1 et seq.), any rules and regulations necessary to implement  
25 the provisions of this section.

26 e. This section shall expire July 1 next following five years after the  
27 date of enactment of this act.

28  
29 21. (New section) The Attorney General shall provide legal  
30 representation to any requesting local government unit located in the  
31 Highlands Region in any cause of action filed against the local  
32 government unit and contesting an act or decision of the local  
33 government unit taken or made under authority granted pursuant to  
34 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.),  
35 R.S.40:27-1 et seq., the "State Uniform Construction Code Act,"  
36 P.L.1975, c.217 (C.52:27D-119 et seq.), or this act, provided that:

37 a. the municipal master plan and development regulations, or, in  
38 the case of a county governmental entity, the county master plan and  
39 associated regulations, have been approved by the council to be in  
40 conformance with the regional master plan in accordance with sections  
41 14 or 15 of this act; and

42 b. the council has certified in writing to the Attorney General that  
43 the act or decision of the local government unit which is the subject of  
44 the cause of action is consistent with the regional master plan.

45  
46 22. (New section) Within 10 days after the date of enactment of

1 this act, the Department of Community Affairs, in consultation with  
2 the Department of Environmental Protection, shall provide guidelines  
3 and instructions to all local government units located wholly or  
4 partially within the preservation area with respect to the processing,  
5 review, and enforcement of applications for development after the date  
6 of enactment of this act and before adoption of the regional master  
7 plan.

8  
9 23. (New section) The municipal master plan and development  
10 regulations of any municipality, and the county master plan and  
11 associated regulations of any county, located in the Highlands Region  
12 which have been approved by the council to be in conformance with  
13 the regional master plan in accordance with sections 14 or 15 of this  
14 act shall be entitled to a strong presumption of validity. In any cause  
15 of action filed against such a local government unit and contesting an  
16 act or decision of the local government unit taken or made under  
17 authority granted pursuant to the "Municipal Land Use Law,"  
18 P.L.1975, c.291 (C.40:55D-1 et seq.), R.S.40:27-1 et seq., the "State  
19 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et  
20 seq.), or this act, the court shall give extraordinary deference to the  
21 local government unit, provided that the municipal master plan and  
22 development regulations, or, in the case of a county governmental  
23 entity, the county master plan and associated regulations, have been  
24 approved by the council to be in conformance with the regional master  
25 plan in accordance with sections 14 or 15 of this act. The plaintiff  
26 shall have the burden of proof to demonstrate by clear and convincing  
27 evidence that the act or decision of any such local government unit  
28 was arbitrary, capricious, or unreasonable or in patent abuse of  
29 discretion.

30  
31 24. (New section) a. The Council on Affordable Housing shall  
32 take into consideration the regional master plan prior to making any  
33 determination regarding the prospective fair share of the housing need  
34 in any municipality in the Highlands Region under the "Fair Housing  
35 Act," P.L.1985, c.222 (C.52:27D-301 et al.).

36 b. Upon adoption by the Highlands Water Protection and Planning  
37 Council of the regional master plan, any municipality located wholly  
38 or partially in the preservation area, and any municipality in the  
39 Highlands planning area that is approved by the Highlands Water  
40 Protection and Planning Council to be in conformance with the  
41 regional master plan pursuant to section 15 of this act, may petition  
42 the Council on Affordable Housing to have its 1987 to 1999 fair share  
43 obligation adjusted in accordance with any applicable rules and  
44 regulations to reflect the change in circumstances in the municipality  
45 resulting from conformance with the regional master plan. In the  
46 event that the municipality has received substantive certification or is

1 subject to a judgment of repose, that protection shall not be affected  
2 or compromised by the adjustment.

3 c. Any municipality requesting an adjustment pursuant to  
4 subsection b. of this section shall be eligible to apply for planning  
5 assistance grants from the State for the purposes of that subsection.

6

7 25. (New section) Within 90 days after the first meeting of the  
8 Highlands Water Protection and Planning Council, the Site  
9 Improvement Advisory Board established pursuant to section 3 of  
10 P.L.1993, c.32 (C.40:55D-40.3) and the Commissioner of Community  
11 Affairs shall consult with the council and the Commissioner of  
12 Environmental Protection concerning whether the site improvement  
13 standards for residential development adopted pursuant to P.L.1993,  
14 c.32 (C.40:55D-40.1 et seq.) are appropriate and sufficiently  
15 protective for the Highlands Region, especially for the preservation  
16 area; and if it is determined they are not, those standards shall be  
17 modified accordingly as soon as practicable to meet that objective.

18

19 26. a. Effective on the date of enactment of this act, any person  
20 who is selling any land, or any interest therein or option therefor,  
21 within the preservation area shall give to the Commissioner of  
22 Environmental Protection written notice, by certified mail, that a  
23 contract of sale has been executed for the property. The notice shall  
24 set forth the terms and conditions of the executed contract of sale and  
25 shall have attached a copy of that contract. The notice of executed  
26 contract of sale shall also include any other information that the  
27 commissioner may reasonably require by rule or regulation. The State  
28 shall have the right of first refusal to purchase the land upon  
29 substantially similar terms and conditions, which right shall be  
30 exercisable as provided by this section. The State may exercise its  
31 right of first refusal only if the land, or the interest therein or option  
32 therefor, is to be used for water supply protection purposes or  
33 recreation and conservation purposes, or farmland preservation  
34 purposes. If the State chooses to exercise its right of first refusal, the  
35 State shall give notice of that intent to the landowner within a period  
36 of 30 days following the date of receipt of the notice of executed  
37 contract of sale. The State shall submit its offer to match the terms  
38 and conditions of the executed contract of sale to the landowner  
39 within the 60 days following the expiration of the 30-day period. If no  
40 notice is given within the 30-day period that the State intends to  
41 exercise its right of first refusal, or if no offer is submitted to the  
42 landowner within the 60-day period following the 30-day period, the  
43 owner may at the expiration of the 30-day period or the 60-day period,  
44 as the case may be, convey the land to the proposed purchaser named  
45 in the executed contract of sale upon the terms and conditions  
46 specified therein, or to the proposed purchaser's assignee as provided

1 in that executed contract of sale. If the owner fails to convey the land  
2 to the named proposed purchaser or an assignee thereof pursuant to  
3 the executed contract of sale, the land shall again become subject to  
4 the State's right of first refusal as provided by this section. A  
5 landowner may elect to convey the land to the State upon the exercise  
6 of the State's right of first refusal without breaching the original  
7 contract of sale, notwithstanding that the State's offer is different than,  
8 or provides for lower consideration than, that in the original executed  
9 contract of sale.

10 b. The requirements of this section shall not apply to any sale or  
11 other conveyance of land between immediate family members, to any  
12 sale of a structure that is located on a lot of less than 10 acres, or to  
13 any land that is subject to the State Agriculture Development  
14 Committee's first right and option to purchase as provided pursuant to  
15 section 2 of P.L.1989, c.28 (C.4:1C-39).

16 c. The Commissioner of Environmental Protection shall, within 60  
17 days after the date of enactment of this act, transmit, by certified mail,  
18 written notice of the provisions of this section to the governing body  
19 of every municipality and county located in whole or in part in the  
20 preservation area, and publish a notice in the New Jersey Register and  
21 in at least two newspapers circulating within the preservation area.

22 d. Any contract made in violation of subsection a. of this section  
23 is voidable.

24 e. Nothing in this section shall be construed so as to limit any  
25 authority granted to the Department of Environmental Protection, the  
26 State Agriculture Development Committee, or any other State entity,  
27 or a local government unit, pursuant to law, to acquire any lands, or  
28 interests therein or options therefor, in such manner as may be  
29 provided in any such law.

30 f. For the purposes of this section, "immediate family member"  
31 means spouse, child, sibling, aunt, uncle, niece, nephew, first cousin,  
32 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,  
33 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half  
34 brother, or half sister, whether the individual is related by blood,  
35 marriage, or adoption.

36  
37 27. (New section) No local government unit, public utility, or  
38 State entity shall sell or otherwise convey any land or interest therein  
39 it owns that is located in the Highlands Region and is utilized for the  
40 purpose of protecting a public water supply, as defined and determined  
41 by the Commissioner of Environmental Protection; except that this  
42 section:

43 a. shall not apply to the sale or conveyance of such lands to  
44 another local government unit, public utility, or State entity for the  
45 purpose of protecting a public water supply, or the sale or conveyance  
46 of such lands for permanent preservation and use for recreation and

1 conservation purposes, provided that in either case the sale or  
2 conveyance is approved by the commissioner; or

3 b. shall not prevent the lease or other conveyance of such lands as  
4 authorized pursuant to P.L.2002, c.47 (C.40A:12-17.1 et al.),  
5 provided that the lands so leased or otherwise conveyed shall continue  
6 to be subject to the prohibition prescribed by this section and the  
7 requirements and provisions of that act.

8

9 28. (New section) The council may institute an action or  
10 proceeding in Superior Court for injunctive relief for any violation of  
11 this act, or any rule or regulation adopted pursuant thereto, or, in the  
12 preservation area for any violation of, or nonconformance with, the  
13 regional master plan, and the court may proceed in the action in a  
14 summary manner. In any proceeding brought pursuant to this section,  
15 the court may also grant temporary or interlocutory relief.

16

17 29. (New section) Any decision rendered or action taken by the  
18 council pursuant to this act shall be a final agency action subject to  
19 judicial review in the Appellate Division of the Superior Court of New  
20 Jersey in accordance with the Rules of Court. The court may grant  
21 such relief as it deems just and proper, and to make and enter an order  
22 enforcing, modifying, and enforcing as so modified, remanding for  
23 further specific evidence or findings, or setting aside in whole or in  
24 part, the decision of the council. The findings of fact upon which the  
25 council's decision is based shall be conclusive if supported by  
26 substantial evidence on the record considered as a whole.

27

28 30. (New section) On or before March 31 in each year the council  
29 shall make an annual report of its activities for the preceding calendar  
30 year to the Governor and the Legislature. Each such report shall set  
31 forth a complete operating and financial statement covering its  
32 operations during the year.

33

34 31. (New section) a. Commencing on the date of enactment of  
35 this act and until the effective date of the rules and regulations adopted  
36 by the Department of Environmental Protection pursuant to sections  
37 32 and 33 of this act, all major development in the preservation area  
38 shall require a Highlands Preservation Area approval from the  
39 department. The Highlands Preservation Area approval shall consist  
40 of the related aspects of other regulatory programs which may include,  
41 but need not be limited to, the "Freshwater Wetlands Protection Act,"  
42 P.L.1987, c.156 (C.13:9B-1 et seq.), "The Endangered and Nongame  
43 Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.), the  
44 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et  
45 seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1  
46 et seq.), "The Realty Improvement Sewerage and Facilities Act

1 (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality  
2 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe  
3 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), the  
4 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et  
5 seq.), and any rules and regulations adopted pursuant thereto. For the  
6 purposes of this section, the provisions of P.L.1975, c. 232 (C.13:1D-  
7 29 et seq.) shall not apply to an application for a permit pursuant to  
8 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50  
9 et seq.).

10 b. The Highlands Preservation Area approval shall also require:

11 (1) a prohibition on major development within 300 feet of any  
12 Highlands open waters, and a 300-foot buffer adjacent to all Highlands  
13 open waters. For the purposes of this paragraph, major development  
14 does not include linear development for infrastructure, utilities, and the  
15 rights-of-way therefor, provided that there is no other feasible  
16 alternative for the linear development outside of the buffer. Structures  
17 or land uses in the buffer existing on the date of enactment of this act  
18 may remain, provided that the area of disturbance shall not be  
19 increased. This paragraph shall not be construed to limit the authority  
20 of the department to establish buffers of any size or any other  
21 protections for category one waters designated by the department  
22 pursuant to the "Water Pollution Control Act," P.L.1977, c.74  
23 (C.58:10A-1 et seq.), or any other law, or any rule or regulation  
24 adopted pursuant thereto, for major development or for other  
25 development that does not qualify as major development;

26 (2) the quality of all Highlands open waters and the waters of the  
27 Highlands within the preservation area to be maintained, restored, or  
28 enhanced, and any new or expanded point source discharge, except  
29 discharges from water supply facilities, shall not degrade existing  
30 water quality. In the case of water supply facilities, all reasonable  
31 measures shall be taken to eliminate or minimize water quality impacts;

32 (3) notwithstanding the provisions of subsection a. of section 5 of  
33 P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted  
34 pursuant thereto, to the contrary, any diversion of more than 50,000  
35 gallons per day, and multiple diversions by the same or related entities  
36 for the same or related projects or developments of more than 50,000  
37 gallons per day, of waters of the Highlands shall require a permit  
38 pursuant to the "Water Supply Management Act," P.L.1981, c.262  
39 (C.58:1A-1 et seq.), and any permit issued pursuant thereto shall be  
40 based on consideration of individual and cumulative impacts of  
41 multiple diversions, maintenance of stream base flows, minimization  
42 of depletive use, maintenance of existing water quality, and protection  
43 of ecological uses;

44 (4) a zero net fill requirement for flood hazard areas pursuant to the  
45 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et  
46 seq.);

1 (5) the antidegradation provisions of the surface water quality  
2 standards and the stormwater regulations applicable to category one  
3 waters to be applied to Highlands open waters;

4 (6) a prohibition on impervious surfaces of greater than three  
5 percent of the land area of a lot existing on the date of enactment of  
6 this act, except that Highlands open waters shall not be included in the  
7 calculation of that land area;

8 (7) a prohibition on development, except linear development for  
9 infrastructure, utilities, and the rights-of-way therefor, provided that  
10 no other feasible alternative exists for the linear development, on steep  
11 slopes with a grade of 20% or greater; and

12 (8) a prohibition on development that disturbs upland forested  
13 areas, in order to prevent soil erosion and sedimentation, protect water  
14 quality, prevent stormwater runoff, and protect threatened and  
15 endangered animal and plant species sites and designated habitats.  
16 Notwithstanding the provisions of this paragraph to the contrary, if a  
17 major development complies with all other applicable requirements for  
18 a Highlands Preservation Area review pursuant to this subsection and  
19 disturbance to an upland forested area is unavoidable, the department  
20 shall allow the disturbance to an upland forested area of no more than  
21 20 feet directly adjacent to a structure and of no more than 10 feet on  
22 each side of a driveway as necessary to access a non-forested area of  
23 a site.

24 c. The Highlands Preservation Area approval required pursuant to  
25 this section shall include a limited review by the department of an  
26 application for a Highlands Preservation Area approval to a review for  
27 the purpose of locating a single family dwelling on the property based  
28 upon the least environmental impact to the natural resources located  
29 on the property when the application is for the construction of a single  
30 family dwelling on property owned by the individual on the date of  
31 enactment of this act, but only if the construction requires an  
32 environmental land use or water permit and does not result in the  
33 ultimate disturbance of one acre or more of land or an increase in  
34 impervious surface by one-quarter acre or more. This limited review  
35 shall not be construed to authorize the waiver of any other provision  
36 of law, or any rule or regulation adopted pursuant thereto.

37  
38 32. (New section) a. Within 270 days after the date of enactment  
39 of this act, and notwithstanding the provisions of the "Administrative  
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
41 the Commissioner of Environmental Protection, after consultation with  
42 the Department of Agriculture, the Department of Community Affairs,  
43 and the State Planning Commission, shall, immediately upon filing  
44 proper notice with the Office of Administrative Law, adopt the rules  
45 and regulations prepared by the department pursuant to section 33 of  
46 this act and any other rules and regulations necessary to establish the

1 Highlands permitting review program established pursuant to section  
2 34 of this act.

3 b. The rules and regulations adopted pursuant to subsection a. of  
4 this section shall be in effect for a period not to exceed one year after  
5 the date of the filing. These rules and regulations shall thereafter be  
6 adopted, amended, or readopted by the commissioner in accordance  
7 with the requirements of the "Administrative Procedure Act," after  
8 consultation with the council, the Department of Agriculture, the  
9 Department of Community Affairs, and the State Planning  
10 Commission.

11 c. The rules and regulations adopted by the commissioner pursuant  
12 to subsection a. of this section and any requirement to obtain a  
13 Highlands permitting review pursuant this act shall not apply to any  
14 major development for which all State environmental land use or water  
15 permits and local permits, approvals, and other authorizations have  
16 been issued.

17

18 33. (New section) The Department of Environmental Protection  
19 shall prepare rules and regulations establishing the environmental  
20 standards for the preservation area upon which the regional master  
21 plan adopted by the council and the Highlands permitting review  
22 program administered by the department pursuant to this act shall be  
23 based. These rules and regulations shall provide for at least the  
24 following:

25 a. a prohibition on major development within 300 feet of any  
26 Highlands open waters, and the establishment of a 300-foot buffer  
27 adjacent to all Highlands open waters. For the purposes of this  
28 subsection, major development does not include linear development  
29 for infrastructure, utilities, and the rights-of-way therefor, provided  
30 that there is no other feasible alternative for the linear development  
31 outside of the buffer. Structures or land uses in the buffer existing on  
32 the date of enactment of this act may remain, provided that the area of  
33 disturbance shall not be increased. This subsection shall not be  
34 construed to limit any authority of the department to establish buffers  
35 of any size or any other protections for category one waters  
36 designated by the department pursuant to the "Water Pollution Control  
37 Act," P.L.1977, c.74 (C.58:10A-1 et seq.), or any other law, or any  
38 rule or regulation adopted pursuant thereto, for major development or  
39 for other development that does not qualify as major development;

40 b. measures to ensure that existing water quality shall be  
41 maintained, restored, or enhanced in all Highlands open waters and  
42 waters of the Highlands, and provide that any new or expanded point  
43 source discharge, except discharges from water supply facilities, shall  
44 not degrade existing water quality. In the case of water supply  
45 facilities, all reasonable measures shall be taken to eliminate or  
46 minimize water quality impacts;

- 1 c. notwithstanding the provisions of section 23 of P.L.1987, c.156  
2 (C.13:9B-23), or any rule or regulation adopted pursuant thereto, to  
3 the contrary, the criteria for the type of activity or activities eligible  
4 for the use of a general permit for an activity located wholly or  
5 partially within a freshwater wetland or freshwater wetland transition  
6 area located wholly or partially in the preservation area, provided that  
7 these criteria are at least as protective as those provided in section 23  
8 of P.L.1987, c.156 (C.13:9B-23);
- 9 d. notwithstanding the provisions of subsection a. of section 5 of  
10 P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted  
11 pursuant thereto, to the contrary, a system for the regulation of any  
12 diversion of more than 50,000 gallons per day, and multiple diversions  
13 by the same or related entities for the same or related projects or  
14 developments of more than 50,000 gallons per day, of waters of the  
15 Highlands pursuant to the "Water Supply Management Act,"  
16 P.L.1981, c.262 (C.58:1A-1 et seq.), and any permit issued pursuant  
17 thereto shall be based on consideration of individual and cumulative  
18 impacts of multiple diversions, maintenance of stream base flows,  
19 minimization of depletive use, maintenance of existing water quality,  
20 and protection of ecological uses;
- 21 e. a septic system density standard established at a level to prevent  
22 the degradation of water quality, or to require the restoration of water  
23 quality, and to protect ecological uses from individual, secondary, and  
24 cumulative impacts, in consideration of deep aquifer recharge available  
25 for dilution;
- 26 f. a zero net fill requirement for flood hazard areas pursuant to the  
27 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et  
28 seq.);
- 29 g. the antidegradation provisions of the surface water quality  
30 standards and the stormwater regulations applicable to category one  
31 waters to be applied to Highlands open waters;
- 32 h. a prohibition on impervious surfaces of greater than three  
33 percent of the land area, except that Highlands open waters shall not  
34 be included in the calculation of that land area;
- 35 i. notwithstanding the provisions of the "Safe Drinking Water Act,"  
36 P.L.1977, c.224 (C.58:12A-1 et seq.), or any rule or regulation  
37 adopted pursuant thereto, to the contrary, a limitation or prohibition  
38 on the construction of new public water systems or the extension of  
39 existing public water systems, except in the case of a demonstrated  
40 need to protect public health and safety;
- 41 j. a prohibition on development, except linear development for  
42 infrastructure, utilities, and the rights-of-way therefor, provided that  
43 no other feasible alternative exists for the linear development, on steep  
44 slopes in the preservation area with a grade of 20% or greater, and  
45 standards for development on slopes in the preservation area exhibiting  
46 a grade of between 10% and 20%. The standards shall assure that

1 developments on slopes exhibiting a grade of between 10% and 20%  
2 preserve and protect steep slopes from the negative consequences of  
3 development on the site and the cumulative impact in the Highlands  
4 Region. The standards shall be developed to prevent soil erosion and  
5 sedimentation, protect water quality, prevent stormwater runoff,  
6 protect threatened and endangered animal and plant species sites and  
7 designated habitats, provide for minimal practicable degradation of  
8 unique or irreplaceable land types, historical or archeological areas,  
9 and existing scenic attributes at the site and within the surrounding  
10 area, protect upland forest, and restrict impervious surface; and shall  
11 take into consideration differing soil types, soil erodability,  
12 topography, hydrology, geology, and vegetation types; and

13 k. a prohibition on development that disturbs upland forested  
14 areas, in order to prevent soil erosion and sedimentation, protect water  
15 quality, prevent stormwater runoff, and protect threatened and  
16 endangered animal and plant species sites and designated habitats; and  
17 standards to protect upland forested areas that require all appropriate  
18 measures be taken to avoid impacts or disturbance to upland forested  
19 areas, and where avoidance is not possible that all appropriate  
20 measures have been taken to minimize and mitigate impacts to upland  
21 forested areas and to prevent soil erosion and sedimentation, protect  
22 water quality, prevent stormwater runoff, and protect threatened and  
23 endangered animal and plant species sites and designated habitats.

24

25 34. (New section) a. The Department of Environmental  
26 Protection shall establish a Highlands permitting review program to  
27 provide for the coordinated review of any major development in the  
28 preservation area based upon the rules and regulations adopted by the  
29 department pursuant to sections 32 and 33 of this act. The Highlands  
30 permitting review program established pursuant to this section shall  
31 consolidate the related aspects of other regulatory programs which  
32 may include, but need not be limited to, the "Freshwater Wetlands  
33 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), "The  
34 Endangered and Nongame Species Conservation Act," P.L.1973,  
35 c.309 (C.23:2A-1 et seq.), the "Water Supply Management Act,"  
36 P.L.1981, c.262 (C.58:1A-1 et seq.), the "Water Pollution Control  
37 Act," P.L.1977, c.74 (C.58:10A-1 et seq.), "The Realty Improvement  
38 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et  
39 seq.), the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1  
40 et seq.), the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1  
41 et seq.), the "Flood Hazard Area Control Act," P.L.1962, c.19  
42 (C.58:16A-50 et seq.), and any rules and regulations adopted pursuant  
43 thereto, and the rules and regulations adopted pursuant to sections 32  
44 and 33 of this act. For the purposes of this section, the provisions of  
45 P.L.1975, c.232 (C.13:1D-29 et seq.) shall not apply to an application  
46 for a permit pursuant to the "Flood Hazard Area Control Act,"

1 P.L.1962, c.19 (C.58:16A-50 et seq.).

2 b. The Highlands permitting review program established pursuant  
3 to this section shall include:

4 (1) a provision limiting the review by the department of an  
5 application to a review for the purpose of locating a single family  
6 dwelling on the property based upon the least environmental impact to  
7 the natural resources located on the property when the application is  
8 for the construction of a single family dwelling on property owned by  
9 the individual on the date of enactment of this act, but only if the  
10 construction requires an environmental land use or water permit and  
11 does not result in the ultimate disturbance of one acre or more of land  
12 or an increase in impervious surface by one-quarter acre or more;

13 (2) (a) a provision that may allow for the waiver of any provision  
14 of a Highlands permitting review on a case-by-case basis to avoid  
15 undue hardship to an individual owner of residential property for one  
16 single family dwelling that includes the ultimate disturbance of one  
17 acre or more of land or an increase in impervious surface by  
18 one-quarter acre or more, provided that the property was owned by  
19 the individual on the date of enactment of this act;

20 (b) a provision that may allow for a waiver of any provision of a  
21 Highlands permitting review on a case-by-case basis if determined to  
22 be necessary by the department in order to protect public health and  
23 safety;

24 (c) a provision that may allow for a waiver of any provision of a  
25 Highlands permitting review on a case-by-case basis for redevelopment  
26 in certain previously developed areas in the preservation area identified  
27 by the council pursuant to subsection b. of section 9 of this act; and

28 (d) a provision that may allow for a waiver of any provision of the  
29 Highlands permitting review on a case-by-case basis in order to avoid  
30 the taking of property without just compensation.

31 The grant of a waiver pursuant to subparagraphs (a), (b), (c), or (d)  
32 of this paragraph by the department shall be conditioned upon the  
33 department's determination that the major development meets the  
34 requirements prescribed for a finding as listed in subsection a. of  
35 section 35 of this act to the maximum extent possible.

36 c. The limited review provision of paragraph (1) of subsection b.  
37 of this section and the waiver provisions of paragraph (2) of  
38 subsection b. of this section are limited to the provisions of the rules  
39 and regulations adopted pursuant to section 33 of this act, and shall  
40 not limit the department's jurisdiction or authority pursuant to any  
41 other provision of law, or any rule or regulation adopted pursuant  
42 thereto, that is incorporated into the Highlands permitting review  
43 program.

44 d. The Highlands permitting review program established pursuant  
45 to this section may provide for the issuance of a general permit  
46 provided that the department adopts rules and regulations which

1 identify the activities subject to general permit review and establish the  
2 criteria for the approval or disapproval of a general permit.

3 e. Any person proposing to construct or cause to be constructed,  
4 or to undertake or cause to be undertaken, as the case may be, a major  
5 development in the preservation area shall file an application for a  
6 Highlands permitting review with the department, on forms and in a  
7 manner prescribed by the department.

8 f. The department shall, in accordance with a fee schedule adopted  
9 as a rule or regulation, establish and charge reasonable fees necessary  
10 to meet the administrative costs of the department associated with the  
11 processing, review, and enforcement of any application for a Highlands  
12 permitting review. These fees shall be deposited in the "Environmental  
13 Services Fund," established pursuant to section 5 of P.L.1975, c.232  
14 (C.13:1D-33), and kept separate and apart from all other State  
15 receipts and appropriated only as provided herein. There shall be  
16 appropriated annually to the department revenue from that fund  
17 sufficient to defray in full the costs incurred in the processing, review,  
18 and enforcement of applications for Highlands permitting reviews.

19

20 35. (New section) a. The Commissioner of Environmental  
21 Protection shall review filed applications for Highlands permitting  
22 reviews, including any information presented at public hearings or  
23 during a comment period, or submitted during the application review  
24 period.

25 Except as otherwise provided by subsection b. of this section, a  
26 Highlands permitting review approval may be issued only upon a  
27 finding that the proposed major development:

28 (1) would have a de minimis impact on water resources and would  
29 not cause or contribute to a significant degradation of surface or  
30 ground waters. In making this determination, the commissioner shall  
31 consider the extent of any impacts on water resources resulting from  
32 the proposed major development, including, but not limited to, the  
33 regenerative capacity of aquifers or other surface or ground water  
34 supplies, increases in stormwater generated, increases in impervious  
35 surface, increases in stormwater pollutant loading, changes in land use,  
36 and changes in vegetative cover;

37 (2) would cause minimal feasible interference with the natural  
38 functioning of animal, plant, and other natural resources at the site and  
39 within the surrounding area, and minimal feasible individual and  
40 cumulative adverse impacts to the environment both onsite and offsite  
41 of the major development;

42 (3) will result in minimum feasible alteration or impairment of the  
43 aquatic ecosystem including existing contour, vegetation, fish and  
44 wildlife resources, and aquatic circulation of a freshwater wetland;

45 (4) will not jeopardize the continued existence of species listed  
46 pursuant to "The Endangered and Nongame Species Conservation

1 Act," P.L.1973, c.309 (C.23:2A-1 et seq.) or the "Endangered Plant  
2 Species List Act," P.L.1989, c.56 (C.13:1B-15.151 et seq.), or which  
3 appear on the federal endangered or threatened species list, and will  
4 not result in the likelihood of the destruction or adverse modification  
5 of habitat for any rare, threatened, or endangered species of animal or  
6 plant;

7 (5) is located or constructed so as to neither endanger human life  
8 or property nor otherwise impair the public health, safety, and welfare;

9 (6) would result in minimal practicable degradation of unique or  
10 irreplaceable land types, historical or archeological areas, and existing  
11 public scenic attributes at the site and within the surrounding area; and

12 (7) meets all other applicable department standards, rules, and  
13 regulations and State laws.

14 b. A Highlands permitting review approval may be issued to a  
15 major development subject to a limited review pursuant to paragraph  
16 (1) of subsection b. of section 34 of this act or granted a waiver  
17 pursuant to the provisions of paragraph (2) of subsection b. of section  
18 34 of this act notwithstanding the inability to make the finding  
19 required pursuant to subsection a. of this section.

20

21 36. (New section) a. Whenever the Commissioner of  
22 Environmental Protection finds that a person has violated any  
23 provision of section 31 of this act, a Highlands permitting review  
24 approval issued pursuant to section 35 of this act, or any rule or  
25 regulation adopted pursuant to sections 32 and 33 of this act, the  
26 commissioner may:

27 (1) Issue an order requiring any such person to comply in  
28 accordance with subsection b. of this section; or

29 (2) Bring a civil action in accordance with subsection c. of this  
30 section; or

31 (3) Levy a civil administrative penalty in accordance with  
32 subsection d. of this section; or

33 (4) Bring an action for a civil penalty in accordance with subsection  
34 e. of this section; or

35 (5) Petition the Attorney General to bring a criminal action in  
36 accordance with subsection f. of this section.

37 Recourse to any of the remedies available under this section shall  
38 not preclude recourse to any of the other remedies prescribed in this  
39 section or by any other applicable law.

40 b. Whenever, on the basis of available information, the  
41 commissioner finds a person in violation of any provision of section 31  
42 of this act, a Highlands permitting review approval issued pursuant to  
43 section 35 of this act, or any rule or regulation adopted pursuant to  
44 sections 32 and 33 of this act, the commissioner may issue an order:

45 (1) specifying the provision or provisions of the rule, regulation,  
46 permit, approval, or authorization of which the person is in violation;

1 (2) citing the action which constituted the violation; (3) requiring  
2 compliance with the provision or provisions violated; (4) requiring the  
3 restoration of the area which is the site of the violation; and (5)  
4 providing notice to the person of the right to a hearing on the matters  
5 contained in the order.

6 c. The commissioner is authorized to institute a civil action in  
7 Superior Court for appropriate relief from any violation of any  
8 provision of section 31 of this act, a Highlands permitting review  
9 approval issued pursuant to section 35 of this act, or any rule or  
10 regulation adopted pursuant to sections 32 and 33 of this act. Such  
11 relief may include, singly or in combination:

12 (1) A temporary or permanent injunction;

13 (2) Assessment of the violator for the costs of any investigation,  
14 inspection, or monitoring survey which led to the establishment of the  
15 violation, and for the reasonable costs of preparing and bringing legal  
16 action under this subsection;

17 (3) Assessment of the violator for any costs incurred by the State  
18 in removing, correcting, or terminating the adverse effects resulting  
19 from any unauthorized regulated activity for which legal action under  
20 this subsection may have been brought;

21 (4) Assessment against the violator for compensatory damages for  
22 any loss or destruction of wildlife, fish or aquatic life, and for any  
23 other actual damages caused by an unauthorized regulated activity;

24 (5) A requirement that the violator restore the site of the violation  
25 to the maximum extent practicable and feasible.

26 d. The commissioner is authorized to assess a civil administrative  
27 penalty of up to \$25,000 for each violation of any provision of section  
28 31 of this act, a Highlands permitting review approval issued pursuant  
29 to section 35 of this act, or any rule or regulation adopted pursuant to  
30 sections 32 and 33 of this act, and each day during which each  
31 violation continues shall constitute an additional, separate, and distinct  
32 offense. Any amount assessed under this subsection shall fall within  
33 a range established by regulation by the commissioner for violations of  
34 similar type, seriousness, and duration. No assessment shall be levied  
35 pursuant to this section until after the party has been notified by  
36 certified mail or personal service. The notice shall: (1) identify the  
37 section of the rule, regulation, permit, approval, or authorization  
38 violated; (2) recite the facts alleged to constitute a violation; (3) state  
39 the amount of the civil penalties to be imposed; and (4) affirm the  
40 rights of the alleged violator to a hearing. The ordered party shall  
41 have 20 days from receipt of the notice within which to deliver to the  
42 commissioner a written request for a hearing. After the hearing and  
43 upon finding that a violation has occurred, the commissioner may issue  
44 a final order after assessing the amount of the fine specified in the  
45 notice. If no hearing is requested, the notice shall become a final order  
46 after the expiration of the 20-day period. Payment of the assessment

1 is due when a final order is issued or the notice becomes a final order.  
2 The authority to levy an administrative penalty is in addition to all  
3 other enforcement provisions in this act and in any other applicable  
4 law, rule, or regulation, and the payment of any assessment shall not  
5 be deemed to affect the availability of any other enforcement  
6 provisions in connection with the violation for which the assessment  
7 is levied. Any civil administrative penalty assessed under this section  
8 may be compromised by the commissioner upon the posting of a  
9 performance bond by the violator, or upon such terms and conditions  
10 as the commissioner may establish by regulation.

11 e. A person who violates any provision of section 31 of this act, a  
12 Highlands permitting review approval issued pursuant to section 35 of  
13 this act, or any rule or regulation adopted pursuant to sections 32 and  
14 33 of this act, an administrative order issued pursuant to subsection b.  
15 of this section, or a court order issued pursuant to subsection c. of this  
16 section, or who fails to pay a civil administrative penalty in full  
17 pursuant to subsection d. of this section, shall be subject, upon order  
18 of a court, to a civil penalty not to exceed \$10,000 per day of such  
19 violation, and each day during which the violation continues shall  
20 constitute an additional, separate, and distinct offense. Any civil  
21 penalty imposed pursuant to this subsection may be collected with  
22 costs in a summary proceeding pursuant to the "Penalty Enforcement  
23 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior  
24 Court and the municipal court shall have jurisdiction to enforce the  
25 provisions of the "Penalty Enforcement Law of 1999" in connection  
26 with this act.

27 f. A person who purposely or negligently violates any provision of  
28 section 31 of this act, a Highlands permitting review approval issued  
29 pursuant to section 35 of this act, or any rule or regulation adopted  
30 pursuant to sections 32 and 33 of this act, shall be guilty, upon  
31 conviction, of a crime of the fourth degree and, notwithstanding any  
32 provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine  
33 of not less than \$2,500 nor more than \$25,000 per day of violation, in  
34 addition to any other applicable penalties and provisions under Title  
35 2C of the New Jersey Statutes. A second or subsequent offense under  
36 this subsection shall subject the violator to a fine, notwithstanding any  
37 provision of N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor  
38 more than \$50,000 per day of violation, in addition to any other  
39 applicable penalties and provisions under Title 2C of the New Jersey  
40 Statutes. A person who knowingly makes a false statement,  
41 representation, or certification in any application, record, or other  
42 document filed or required to be maintained under this act shall be  
43 guilty, upon conviction, of a crime of the fourth degree and,  
44 notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall  
45 be subject to a fine of not more than \$10,000, in addition to any other  
46 applicable penalties and provisions under Title 2C of the New Jersey

1 Statutes.

2 g. In addition to the penalties prescribed in this section, a notice of  
3 violation of any provision of section 31 of this act, a Highlands  
4 permitting review approval issued pursuant to section 35 of this act,  
5 or any rule or regulation adopted pursuant to sections 32 and 33 of  
6 this act, shall be recorded on the deed of the property wherein the  
7 violation occurred, on order of the commissioner, by the clerk or  
8 register of deeds and mortgages of the county wherein the affected  
9 property is located and with the clerk of the Superior Court and shall  
10 remain attached thereto until such time as the violation has been  
11 remedied and the commissioner orders the notice of violation  
12 removed.

13 h. The department may require an applicant or permittee to provide  
14 any information the department requires to determine compliance with  
15 any provision of section 31 of this act, a Highlands permitting review  
16 approval issued pursuant to section 35 of this act, or any rule or  
17 regulation adopted pursuant to sections 32 and 33 of this act.

18 i. All penalties collected pursuant to this section shall either be  
19 used, as determined by the council, by the department for the  
20 acquisition of lands in the preservation area or by any development  
21 transfer bank used or established by the council to purchase  
22 development potential in the preservation area.

23

24 37. (New section) Notwithstanding the provisions P.L.1987, c.156  
25 (C.13:9B-1 et seq.), or any rule or regulation adopted pursuant  
26 thereto, to the contrary, major development as defined in section 3 of  
27 P.L. , c. (C. ) (now before the Legislature as this bill) that  
28 includes a regulated activity as defined in section 3 of P.L.1987, c.156  
29 (C.13:9B-3) in a freshwater wetland or freshwater wetland transition  
30 area located wholly or partially in the Highlands preservation area as  
31 defined in section 3 of P.L. , c. (C. ) (now before the Legislature  
32 as this bill) shall also be regulated pursuant to sections 31 through 36  
33 of P.L. , c. (C. ) (now before the Legislature as this bill).

34

35 38. (New section) Notwithstanding the provisions of subsection  
36 a. of section 5 of P.L.1981, c.262 (C.58:1A-5), or any rule or  
37 regulation adopted pursuant thereto, to the contrary, the Department  
38 of Environmental Protection, pursuant to section 33 of P.L. , c.  
39 (C. ) (now before the Legislature as this bill), shall establish a permit  
40 system to provide for review of allocations or reallocations of waters  
41 of the Highlands, as defined in section 3 of P.L. , c. (C. ) (now  
42 before the Legislature as this bill), to provide for the issuance of  
43 permits for diversions either individually or cumulatively of more than  
44 50,000 gallons per day of waters of the Highlands in the Highlands  
45 preservation area as defined in section 3 of P.L. , c. (C. ) (now  
46 before the Legislature as this bill).

1       39. (New section) Notwithstanding the provisions of the "Water  
2 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and the  
3 "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.),  
4 or any rule or regulation adopted pursuant thereto, to the contrary, the  
5 Department of Environmental Protection, pursuant to section 33 of  
6 P.L. , c. (C. ) (now before the Legislature as this bill), shall  
7 establish a septic system density standard at a level to prevent the  
8 degradation of water quality, or to require the restoration of water  
9 quality, and to protect ecological uses from individual, secondary, and  
10 cumulative impacts, in consideration of deep aquifer recharge available  
11 for dilution, which standard shall be applied to any major development  
12 as defined in section 3 of P.L. , c. (C. ) (now before the  
13 Legislature as this bill) located wholly or partially within the Highlands  
14 preservation area as defined in section 3 of P.L. , c. (C. ) (now  
15 before the Legislature as this bill).

16

17       40. (New section) Notwithstanding the provisions of the "Safe  
18 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or any  
19 rule or regulation adopted pursuant thereto, to the contrary, the  
20 Department of Environmental Protection, pursuant to section 33 of  
21 P.L. , c. (C. ) (now before the Legislature as this bill), within the  
22 Highlands preservation area as defined in section 3 of P.L. , c.  
23 (C. ) (now before the Legislature as this bill), shall limit or prohibit  
24 the construction of new public water systems or the extension of  
25 existing public water systems, except in the case of a demonstrated  
26 need to protect public health and safety.

27

28       41. (New section) Notwithstanding the provisions of the "Water  
29 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and the  
30 "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.),  
31 or any rule or regulation adopted pursuant thereto, to the contrary,  
32 within the Highlands preservation area as defined in section 3 of  
33 P.L. , c. (C. ) (now before the Legislature as this bill),  
34 designated sewer service areas for which wastewater collection  
35 systems have not been installed on the date of enactment of P.L. ,  
36 c. (C. ) (now before the Legislature as this bill) are hereby  
37 revoked, and any associated treatment works approvals in the  
38 impacted areas shall expire on the date of enactment of P.L. , c.  
39 (C. ) (now before the Legislature as this bill), and the Department of  
40 Environmental Protection shall implement measures to amend any  
41 water quality management plan as appropriate to reflect the revocation  
42 of designated sewer service areas pursuant to this section.

43

44       42. (New section) Notwithstanding the provisions of the "Flood  
45 Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or  
46 any rule or regulation adopted pursuant thereto, to the contrary, the

1 Department of Environmental Protection, pursuant to section 33 of  
2 P.L. , c. (C. ) (now before the Legislature as this bill), shall  
3 establish a zero net fill requirement within any flood hazard area  
4 located wholly or partially within the Highlands preservation area as  
5 defined in section 3 of P.L. , c. (C. ) (now before the Legislature  
6 as this bill).

7  
8 43. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read  
9 as follows:

10 24. a. Any landowner applying to the board to sell a development  
11 easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall  
12 offer to sell the development easement at a price which, in the opinion  
13 of the landowner, represents a fair value of the development potential  
14 of the land for nonagricultural purposes, as determined in accordance  
15 with the provisions of [this act] P.L.1983, c.32 (C.4:1C-11 et seq.).

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

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

23  
24 nonagricultural - agricultural - landowner's  
25 developmental value value asking price  
26 -----  
27 nonagricultural - agricultural  
28 development value value  
29

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

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

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

39 c. Two independent appraisals paid for by the board shall be  
40 conducted for each parcel of land so offered and deemed suitable. The  
41 appraisals shall be conducted by independent, professional appraisers  
42 selected by the board and the committee from among members of  
43 recognized organizations of real estate appraisers. The appraisals shall  
44 determine the current overall value of the parcel for nonagricultural  
45 purposes, as well as the current market value of the parcel for  
46 agricultural purposes. The difference between the two values shall

1 represent an appraisal of the value of the development easement. If  
2 Burlington County or a municipality therein has established a  
3 development transfer bank pursuant to the provisions of P.L.1989,  
4 c.86 (C.40:55D-113 et seq.) or the Highlands Water Protection and  
5 Planning Council has established a development transfer bank pursuant  
6 to section 13 of P.L. , c. (C. ) (now before the Legislature as  
7 this bill), the municipal average of the value of the development  
8 potential of property in a sending zone established by the bank may be  
9 the value used by the board in determining the value of the  
10 development easement. If a development easement is purchased using  
11 moneys appropriated from the fund, the State shall provide no more  
12 than 80%, except 100% under emergency conditions specified by the  
13 committee pursuant to rules or regulations, of the cost of the  
14 appraisals conducted pursuant to this section.

15 d. Upon receiving the results of the appraisals, or in Burlington  
16 county or a municipality therein or elsewhere where a municipal  
17 average has been established under [P.L.1989, c.86 (C.40:55D-113 et  
18 seq.)] subsection c. of this section, upon receiving an application from  
19 the landowners, the board and the committee shall compare the  
20 appraised value, or the municipal average, as the case may be, and the  
21 landowner's offer and, pursuant to the suitability criteria established in  
22 subsection b. of this section:

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

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

27 e. Upon approval by the committee and the board, the secretary is  
28 authorized to provide the board, within the limits of funds  
29 appropriated therefor, an amount equal to no more than 80%, except  
30 100% under emergency conditions specified by the committee  
31 pursuant to rules or regulations, of the purchase price of the  
32 development easement, as determined pursuant to the provisions of  
33 this section. The board shall provide its required share and accept the  
34 landowner's offer to sell the development easement. The acceptance  
35 shall cite the specific terms, contingencies and conditions of the  
36 purchase.

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

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

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

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

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

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

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

25 (b) For the purposes of paragraph (2) of this subsection, "historic  
26 building or structure" means the same as that term is defined pursuant  
27 to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).  
28 (cf: P.L.2001, c.405, s.3)

29  
30 44. Section 29 of P.L.1983, c.32 (C.4:1C-36) is amended to read  
31 as follows:

32 29. Nothing herein contained shall be construed to prohibit the  
33 creation of a municipally approved program or other farmland  
34 preservation program, the purchase of development easements, or the  
35 extension of any other benefit herein provided on land, and to owners  
36 thereof, in the Pinelands area, as defined pursuant to section 3 of P.L.  
37 1979, c. 111 (C. 13:18A-3), or in the Highlands Region, as defined in  
38 section 3 of P.L. , c. (C. ) (now before the Legislature as this  
39 bill) .

40 (cf: P.L.1983, c.32, s.29)

41  
42 45. Section 4 of P.L.1993, c.339 (C.4:1C-52) is amended to read  
43 as follows:

44 4. The board shall have the following powers:

45 a. To purchase, or to provide matching funds for the purchase of  
46 80% of, the value of development potential and to otherwise facilitate

1 development transfers, from the owner of record of the property from  
2 which the development potential is to be transferred or from any  
3 person, or entity, public or private, holding the interest in development  
4 potential that is subject to development transfer; provided that, in the  
5 case of providing matching funds for the purchase of 80% of the value  
6 of development potential, the remaining 20% of that value is  
7 contributed by the affected municipality or county, or both, after  
8 public notice thereof in the New Jersey Register and in one newspaper  
9 of general circulation in the area affected by the purchase. The  
10 remaining 20% of the value of the development potential to be  
11 contributed by the affected municipality or county, or both, to match  
12 funds provided by the board, may be obtained by purchase from, or  
13 donation by, the owner of record of the property from which the  
14 development potential is to be transferred or from any person, or  
15 entity, public or private, holding the interest in development potential  
16 that is subject to development transfer. The value of development  
17 potential may be determined by either appraisal, municipal averaging  
18 based upon appraisal data, or by a formula supported by appraisal  
19 data. The board may also engage in development transfer by sale,  
20 exchange, or other method of conveyance, provided that in doing so,  
21 the board shall not substantially impair the private sale, exchange or  
22 other method of conveyance of development potential. The board may  
23 not, nor shall anything in this act be construed as permitting the board  
24 to, engage in development transfer from one municipality to another,  
25 which transfer is not in accordance with the ordinances of both  
26 municipalities;

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

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

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

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

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

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

45 h. To retain such staff as may be necessary in the career service  
46 and to appoint an executive director thereof. The executive director

1 shall serve as a member of the senior executive or unclassified service  
2 and may be appointed without regard to the provisions of Title 11A of  
3 the New Jersey Statutes;

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

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

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

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

29 m. To provide planning assistance grants to municipalities that  
30 have adopted viable development transfer ordinances, as determined  
31 by the board, for up to 50% of the cost of planning associated with  
32 such an ordinance and incurred by a municipality, or \$10,000,  
33 whichever is less, which grants shall be made utilizing moneys  
34 deposited into the bank pursuant to section 8 of [this act] P.L.1993,  
35 c.339;

36 n. To provide funding to any development transfer bank that may  
37 be established by the Highlands Water Protection and Planning Council  
38 pursuant to section 13 of P.L. , c. (C. ) (now before the  
39 Legislature as this bill), for (1) the purchase of development potential  
40 by the Highlands development transfer bank, and (2) the council to  
41 provide planning assistance grants to municipalities in the Highlands  
42 Region that are participating in a transfer of development rights  
43 program implemented by the council pursuant to section 13 of P.L. ,  
44 c. (C. ) (now before the Legislature as this bill) in such amounts as  
45 the council deems appropriate notwithstanding any provision of  
46 subsection m. of this section or of section 8 of P.L.1993, c.339 to the

1 contrary; and

2 o. To serve as a development transfer bank for the Highlands  
3 Region if requested to do so by the Highlands Water Protection and  
4 Planning Council pursuant to section 13 of P.L. , c. (C. ) (now  
5 before the Legislature as this bill) .

6 (cf: P.L.1993, c.339, s.4)

7

8 46. Section 11 of P.L.1983, c.560 (C.13:1B-15.143) is amended  
9 to read as follows:

10 11. Subject to the provisions of Title [11 of the Revised] 11A of  
11 the New Jersey Statutes, and within the limits of funds appropriated  
12 or otherwise made available, the commissioner may appoint any officer  
13 or employee to the department necessary to carry out the provisions  
14 of [this act] P.L.1983, c.560 (C.13:1B-15.133 et seq.) , fix and  
15 determine their qualifications, which may include a knowledge of and  
16 familiarity with the pinelands area or the Highlands Region and the  
17 residents thereof.

18 (cf: P.L.1983, c.560, s.11)

19

20 47. Section 1 of P.L.1997, c.64 (C.13:1B-15.159) is amended to  
21 read as follows:

22 1. The Department of Environmental Protection, in cooperation  
23 with the Division of Travel and Tourism in the [Department of] New  
24 Jersey Commerce and Economic [Development] Growth Commission,  
25 [and] in consultation with the Pinelands Commission as it affects the  
26 pinelands area designated pursuant to section 10 of P.L.1979, c.111  
27 (C.13:18A-11), and in consultation with the Highlands Water  
28 Protection and Planning Council as it affects the Highlands Region  
29 designated pursuant to section 7 of P.L. , c. (C. ) (now before  
30 the Legislature as this bill), shall establish a natural resources  
31 inventory, using the Geographic Information System, for the purpose  
32 of encouraging ecologically based tourism and recreation in New  
33 Jersey. This inventory shall contain information on New Jersey's  
34 natural, historic, and recreational resources, and shall include, to the  
35 greatest extent possible, but need not be limited to, federal, State,  
36 county and local parks, wildlife management areas, hatcheries, natural  
37 areas, historic sites, State forests, recreational areas, ecological and  
38 biological study sites, reservoirs, marinas, boat launches,  
39 campgrounds, waterfront access points, winter sports recreation areas,  
40 and national wildlife refuges.

41 (cf: P.L.1997, c.64, s.1)

42

43 48. Section 1 of P.L.1995, c.306 (C.13:1D-58) is amended to read  
44 as follows:

45 1. a. The provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) shall  
46 not apply in the case of conveyances by the State or the department

1 involving an exchange of lands within the pinelands area, as defined in  
2 section 10 of P.L.1979, c.111 (C.13:18A-11), or within the  
3 Hackensack Meadowlands District, as defined in section 4 of  
4 P.L.1968, c.404 (C.13:17-4), or within the Highlands Region as  
5 defined in section 3 of P.L. , c. (C. ) (now before the Legislature  
6 as this bill), to the federal government or any agency or entity thereof,  
7 another State agency or entity, or a local unit, provided the lands to be  
8 conveyed are used for recreation or conservation purposes, shall  
9 continue to be used for recreation or conservation purposes and it has  
10 been determined pursuant to subsection c. of this section that the  
11 proposed recreation and conservation purposes for the lands do not  
12 significantly alter the ecological and environmental value of the lands  
13 being exchanged.

14 b. Prior to any conveyance of lands that is exempted from the  
15 provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) pursuant to  
16 subsection a. of this section, the Department of Environmental  
17 Protection shall conduct at least one public hearing on the proposed  
18 conveyance in the municipality in which the lands proposed to be  
19 conveyed are located. The local unit proposing the recreation or  
20 conservation use of the lands being exchanged shall present its  
21 proposal for the use of the lands being exchanged at the public  
22 hearing, including a description of the proposed recreation or  
23 conservation use of the lands and any proposed alterations to the lands  
24 for the recreation or conservation purposes.

25 c. As a condition of any conveyance of lands that is exempted from  
26 the provisions of P.L.1993, c.38 (C.13:1D-51 et seq.) pursuant to  
27 subsection a. of this section, and prior to any public hearing required  
28 pursuant to subsection b. of this section, the Pinelands Commission,  
29 **[or] the [Hackensack] New Jersey Meadowlands [Development]**  
30 **Commission, or the Highlands Water Protection and Planning Council,**  
31 as appropriate, after consultation with the local units in which the  
32 lands to be conveyed are located, shall determine that the proposed  
33 recreation or conservation purpose does not significantly alter the  
34 ecological and environmental value of the lands being exchanged. The  
35 appropriate commission or council shall determine that the proposed  
36 recreation or conservation purpose does not significantly alter the  
37 ecological and environmental value of the lands being exchanged, if:

38 (1) the appropriate commission or council determines that any  
39 proposed recreation or conservation use of the lands being exchanged  
40 is consistent with the law, rules and regulations governing the  
41 protection and development of the pinelands area or pinelands  
42 preservation area, as appropriate and as defined in section 10 of  
43 P.L.1979, c.111 (C.13:18A-11), **[or] the Hackensack Meadowlands**  
44 **District, as defined in section 4 of P.L.1968, c.404 (C.13:17-4), or the**  
45 **Highlands Region, as defined in section 3 of P.L. , c. (C. ) (now**  
46 **before the Legislature as this bill), and the requirements of the law,**

1 rules or regulations have been met to the satisfaction of the  
2 appropriate commission or council; and

3 (2) a portion of the lands would be maintained in an undeveloped  
4 or pre-conveyance state and no wetlands would be negatively affected  
5 in violation of State or federal law, or any rules or regulations adopted  
6 pursuant thereto.

7 The determinations required pursuant to this subsection shall be  
8 made available to the public at the time of the public hearing required  
9 pursuant to subsection b. of this section.

10 d. For the purposes of this section, "local unit" means a  
11 municipality, county, or other political subdivision of the State, or any  
12 agency thereof authorized to administer, protect, develop and maintain  
13 lands for recreation and conservation purposes.

14 (cf: P.L.1995, c.306, s.1)

15

16 49. Section 18 of P.L.1985, c.432 (C.13:1M-18) is amended to  
17 read as follows:

18 18. a. Nothing in this act shall be construed to supersede or  
19 prohibit the adoption, by the governing body of any [county or]  
20 municipality or county, of any ordinance or resolution regulating or  
21 prohibiting the exploration beyond the reconnaissance phase, drilling  
22 for and the extraction of oil and natural gas. As used in this section,  
23 "reconnaissance" means:

24 (1) A geologic and mineral resource appraisal of a region by  
25 searching and analyzing published literature, aerial photography, and  
26 geologic maps;

27 (2) Use of geophysical, geochemical, and remote sensing techniques  
28 that do not involve road building, land clearing or the introduction of  
29 chemicals to a land or water area;

30 (3) Surface geologic, topographic or other mapping and property  
31 surveying; or

32 (4) Sample collections which do not involve excavation or drilling  
33 equipment or the introduction of chemicals to land or water area.

34 b. A municipality or county shall submit a copy of any ordinance  
35 or regulation specifically pertaining to activities regulated by this act,  
36 or a rule or regulation promulgated pursuant to this act, to the  
37 department.

38 c. The department shall, within 90 days of submittal, approve or  
39 disapprove any ordinance or regulation submitted pursuant to  
40 subsection b. of this section. An ordinance or regulation shall be  
41 disapproved only if the department finds it unreasonable and provides  
42 in writing its reasons for the finding. The failure of the department to  
43 act within 90 days of submittal shall constitute approval.

44 d. Nothing in this section shall be construed to limit the authority  
45 of a municipality or county or board of health to enact ordinances or  
46 regulations of general applicability to all industrial or commercial

1 activities, including, but not limited to, ordinances and regulations  
2 limiting noise, light, and odor.

3 e. The department shall not approve any ordinance or regulation  
4 submitted pursuant to subsection b. of this section which governs  
5 activities within the Pinelands area designated in the "Pinelands  
6 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), unless the  
7 Pinelands Commission has approved the ordinance or regulation. The  
8 department shall not disapprove an ordinance or regulation, or portion  
9 thereof, which has been certified by the Pinelands Commission as  
10 consistent with the requirements of the Comprehensive Management  
11 Plan as required by the "Pinelands Protection Act."

12 f. The department shall not approve any ordinance or regulation  
13 submitted pursuant to subsection b. of this section which governs  
14 activities within the Highlands preservation area designated in the  
15 "Highlands Water Protection and Planning Act," P.L. , c. (C. )  
16 (now before the Legislature as this bill), unless the Highlands Water  
17 Protection and Planning Council has approved the ordinance or  
18 regulation. The department shall not disapprove an ordinance or  
19 regulation, or portion thereof, which has been certified by the  
20 Highlands Water Protection and Planning Council as consistent with  
21 the requirements of the Highlands regional master plan as required by  
22 the "Highlands Water Protection and Planning Act."

23 (cf: P.L.1985, c.432, s.18)

24

25 50. Section 25 of P.L.1999, c.152 (C.13:8C-25) is amended to  
26 read as follows:

27 25. Within one year after the date of enactment of this act, and  
28 biennially thereafter until and including 2008, the Garden State  
29 Preservation Trust, after consultation with the Department of  
30 Environmental Protection, the State Agriculture Development  
31 Committee, the New Jersey Historic Trust, the Pinelands Commission,  
32 the Highlands Water Protection and Planning Council, and the Office  
33 of State Planning in the Department of Community Affairs, shall  
34 prepare and submit to the Governor and the Legislature a written  
35 report, which shall:

36 a. Describe the progress being made on achieving the goals and  
37 objectives of Article VIII, Section II, paragraph 7 of the State  
38 Constitution and this act with respect to the acquisition and  
39 development of lands for recreation and conservation purposes, the  
40 preservation of farmland, and the preservation of historic properties,  
41 and provide recommendations with respect to any legislative,  
42 administrative, or local action that may be required to ensure that  
43 those goals and objectives may be met in the future;

44 b. Tabulate, both for the reporting period and cumulatively, the  
45 total acreage for the entire State, and the acreage in each county and  
46 municipality, of lands acquired for recreation and conservation

1 purposes and of farmland preserved for farmland preservation  
2 purposes that have been applied toward meeting the goals and  
3 objectives of Article VIII, Section II, paragraph 7 of the State  
4 Constitution and this act with respect to the acquisition of lands for  
5 recreation and conservation purposes and the preservation of farmland;

6 c. Tabulate, both for the reporting period and cumulatively, the  
7 total acreage for the entire State, and the acreage in each county and  
8 municipality, of any donations of land that have been applied toward  
9 meeting the goals and objectives of Article VIII, Section II, paragraph  
10 7 of the State Constitution and this act with respect to the acquisition  
11 of lands for recreation and conservation purposes and the preservation  
12 of farmland;

13 d. List, both for the reporting period and cumulatively, and by  
14 project name, project sponsor, and location by county and  
15 municipality, all historic preservation projects funded with  
16 constitutionally dedicated moneys in whole or in part;

17 e. Indicate those areas of the State where, as designated by the  
18 Department of Environmental Protection in the Open Space Master  
19 Plan prepared pursuant to section 5 of P.L.2002, c.76 (C.13:8C-25.1),  
20 the acquisition and development of lands by the State for recreation  
21 and conservation purposes is planned or is most likely to occur, and  
22 those areas of the State where there is a need to protect water  
23 resources, including the identification of lands where protection is  
24 needed to assure adequate quality and quantity of drinking water  
25 supplies in times of drought, indicate those areas of the State where  
26 the allocation of constitutionally dedicated moneys for farmland  
27 preservation purposes is planned or is most likely to occur, and  
28 provide a proposed schedule and expenditure plan for those  
29 acquisitions, developments, and allocations, for the next reporting  
30 period, which shall include an explanation of how those acquisitions,  
31 developments, and allocations will be distributed throughout all  
32 geographic regions of the State to the maximum extent practicable and  
33 feasible;

34 f. List any surplus real property owned by the State or an  
35 independent authority of the State that may be utilizable for recreation  
36 and conservation purposes or farmland preservation purposes, and  
37 indicate what action has been or must be taken to effect a conveyance  
38 of those lands to the department, the committee, local government  
39 units, qualifying tax exempt nonprofit organizations, or other entities  
40 or persons so that the lands may be preserved and used for those  
41 purposes;

42 g. List, for the reporting period, all projects for which applications  
43 for funding under the Green Acres, farmland preservation, and historic  
44 preservation programs were received but not funded with  
45 constitutionally dedicated moneys during the reporting period, and the  
46 reason or reasons why those projects were not funded;

1 h. Provide, for the reporting period, a comparison of the amount  
2 of constitutionally dedicated moneys annually appropriated for local  
3 government unit projects for recreation and conservation purposes in  
4 municipalities eligible to receive State aid pursuant to P.L.1978, c.14  
5 (C.52:27D-178 et seq.) to the average amount of Green Acres bond  
6 act moneys annually appropriated for such projects in the years 1984  
7 through 1998; and

8 i. Tabulate, both for the reporting period and cumulatively, the  
9 total acreage for the entire State, and the acreage in each county and  
10 municipality, of lands acquired for recreation and conservation  
11 purposes that protect water resources and that protect flood-prone  
12 areas.

13 (cf: P.L.2002, c.76, s.3)

14

15 51. Section 5 of P.L.2002, c.76 (C.13:8C-25.1) is amended to read  
16 as follows:

17 5. a. Within one year after the date of enactment of P.L.2002, c.76  
18 (C.13:8C-25.1 et al.), and annually thereafter, the Department of  
19 Environmental Protection, in consultation with the Office of State  
20 Planning in the Department of Community Affairs [and], the Pinelands  
21 Commission, and the Highlands Water Protection and Planning  
22 Council, shall prepare and submit to the Governor and the Legislature  
23 an Open Space Master Plan, which shall indicate those areas of the  
24 State where the acquisition and development of lands by the State for  
25 recreation and conservation purposes is planned or is most likely to  
26 occur, and those areas of the State where there is a need to protect  
27 water resources, including the identification of lands where protection  
28 is needed to assure adequate quality and quantity of drinking water  
29 supplies in times of drought, and which shall provide a proposed  
30 schedule and expenditure plan for those acquisitions and developments  
31 for the next reporting period, which shall include an explanation of  
32 how those acquisitions and developments will be distributed  
33 throughout all geographic regions of the State to the maximum extent  
34 practicable and feasible.

35 b. The department shall provide any information the Garden State  
36 Preservation Trust deems necessary in preparing its biennial report  
37 pursuant to section 25 of P.L.1999, c.152 (C.13:8C-25).

38 (cf: P.L.2002, c.76, s.5)

39

40 52. Section 26 of P.L.1999, c.152 (C.13:8C-26) is amended to  
41 read as follows:

42 26. a. Moneys appropriated from the Garden State Green Acres  
43 Preservation Trust Fund to the Department of Environmental  
44 Protection shall be used by the department to:

45 (1) Pay the cost of acquisition and development of lands by the  
46 State for recreation and conservation purposes;

1 (2) Provide grants and loans to assist local government units to pay  
2 the cost of acquisition and development of lands for recreation and  
3 conservation purposes; and

4 (3) Provide grants to assist qualifying tax exempt nonprofit  
5 organizations to pay the cost of acquisition and development of lands  
6 for recreation and conservation purposes.

7 b. The expenditure and allocation of constitutionally dedicated  
8 moneys for recreation and conservation purposes shall reflect the  
9 geographic diversity of the State to the maximum extent practicable  
10 and feasible.

11 c. (1) Notwithstanding the provisions of section 5 of P.L.1985,  
12 c.310 (C.13:18A-34) or this act, or any rule or regulation adopted  
13 pursuant thereto, to the contrary, the value of a pinelands development  
14 credit, allocated to a parcel pursuant to P.L.1979, c.111 (C.13:18A-1  
15 et seq.) and the pinelands comprehensive management plan adopted  
16 pursuant thereto, shall be made utilizing a value to be determined by  
17 either appraisal, regional averaging based upon appraisal data, or a  
18 formula supported by appraisal data. The appraisal and appraisal data  
19 shall consider as appropriate: land values in the pinelands regional  
20 growth areas; land values in counties, municipalities, and other areas  
21 reasonably contiguous to, but outside of, the pinelands area; and other  
22 relevant factors as may be necessary to maintain the environmental,  
23 ecological, and agricultural qualities of the pinelands area.

24 (2) No pinelands development credit allocated to a parcel of land  
25 pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.) and the pinelands  
26 comprehensive management plan adopted pursuant thereto that is  
27 acquired or obtained in connection with the acquisition of the parcel  
28 for recreation and conservation purposes by the State, a local  
29 government unit, or a qualifying tax exempt nonprofit organization  
30 using constitutionally dedicated moneys in whole or in part may be  
31 conveyed in any manner. All such pinelands development credits shall  
32 be retired permanently.

33 d. (1) (a) For State fiscal years 2000 through 2004 only, when the  
34 department, a local government unit, or a qualifying tax exempt  
35 nonprofit organization seeks to acquire lands for recreation and  
36 conservation purposes using constitutionally dedicated moneys in  
37 whole or in part or Green Acres bond act moneys in whole or in part,  
38 it shall conduct or cause to be conducted an appraisal or appraisals of  
39 the value of the lands that shall be made using the land use zoning of  
40 the lands (i) in effect at the time of proposed acquisition, and (ii) in  
41 effect on November 3, 1998 as if that land use zoning is still in effect  
42 at the time of proposed acquisition. The higher of those two values  
43 shall be utilized by the department, a local government unit, or a  
44 qualifying tax exempt nonprofit organization as the basis for  
45 negotiation with the landowner with respect to the acquisition price  
46 for the lands. The landowner shall be provided with both values

1 determined pursuant to this subparagraph.

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

5 (b) After the date of enactment of P.L.2001, c.315 and through  
6 June 30, 2004, in determining the two values required pursuant to  
7 subparagraph (a) of this paragraph, the appraisal shall be made using  
8 not only the land use zoning but also the Department of Environmental  
9 Protection wastewater, water quality and watershed management rules  
10 and regulations and associated requirements and standards applicable  
11 to the lands subject to the appraisal (i) in effect at the time of  
12 proposed acquisition, and (ii) in effect on November 3, 1998 as if  
13 those rules and regulations and associated requirements and standards  
14 are still in effect at the time of proposed acquisition.

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

18 (3) This subsection shall not:

19 (a) apply if the land use zoning of the lands at the time of proposed  
20 acquisition, and the Department of Environmental Protection  
21 wastewater, water quality and watershed management rules and  
22 regulations and associated requirements and standards applicable to  
23 the lands at the time of proposed acquisition, have not changed since  
24 November 3, 1998;

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

27 (c) apply in the case of lands to be acquired in accordance with  
28 subsection c. of this section;

29 (d) apply to projects funded using constitutionally dedicated  
30 moneys appropriated pursuant to the annual appropriations act for  
31 State fiscal year 2000 (P.L.1999, c.138); or

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

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

39 f. Moneys appropriated from the fund shall not be used by local  
40 government units or qualifying tax exempt nonprofit organizations to  
41 acquire lands that are already permanently preserved for recreation and  
42 conservation purposes, as determined by the department.

43 g. Whenever lands are donated to the State by a public utility, as  
44 defined pursuant to Title 48 of the Revised Statutes, for recreation and  
45 conservation purposes, the commissioner may make and keep the lands  
46 accessible to the public, unless the commissioner determines that

1 public accessibility would be detrimental to the lands or any natural  
2 resources associated therewith.

3 h. Whenever the State acquires land for recreation and conservation  
4 purposes, the agency in the Department of Environmental Protection  
5 responsible for administering the land shall, within six months after the  
6 date of acquisition, inspect the land for the presence of any buildings  
7 or structures thereon which are or may be historic properties and,  
8 within 60 days after completion of the inspection, provide to the New  
9 Jersey Historic Preservation Office in the department (1) a written  
10 notice of its findings, and (2) for any buildings or structures which are  
11 or may be historic properties discovered on the land, a request for  
12 determination of potential eligibility for inclusion of the historic  
13 building or structure in the New Jersey Register of Historic Places.  
14 Whenever such a building or structure is discovered, a copy of the  
15 written notice provided to the New Jersey Historic Preservation Office  
16 shall also be sent to the New Jersey Historic Trust and to the county  
17 historical commission or advisory committee, the county historical  
18 society, the local historic preservation commission or advisory  
19 committee, and the local historical society if any of those entities exist  
20 in the county or municipality wherein the land is located.

21 i. (1) Commencing July 1, 2004 and until five years after the date  
22 of enactment of P.L.2001, c.315, when the department, a local  
23 government unit, or a qualifying tax exempt nonprofit organization  
24 seeks to acquire lands for recreation and conservation purposes using  
25 constitutionally dedicated moneys in whole or in part or Green Acres  
26 bond act moneys in whole or in part, it shall conduct or cause to be  
27 conducted an appraisal or appraisals of the value of the lands that shall  
28 be made using the Department of Environmental Protection  
29 wastewater, water quality and watershed management rules and  
30 regulations and associated requirements and standards applicable to  
31 the lands subject to the appraisal (a) in effect at the time of proposed  
32 acquisition, and (b) in effect on November 3, 1998 as if those rules and  
33 regulations and associated requirements and standards are still in effect  
34 at the time of proposed acquisition. The higher of those two values  
35 shall be utilized by the department, a local government unit, or a  
36 qualifying tax exempt nonprofit organization as the basis for  
37 negotiation with the landowner with respect to the acquisition price  
38 for the lands. The landowner shall be provided with both values  
39 determined pursuant to this paragraph. A landowner may waive any  
40 of the requirements of this paragraph and may agree to sell the lands  
41 for less than the values determined pursuant to this paragraph.

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

45 (3) This subsection shall not:

46 (a) apply if the Department of Environmental Protection

1 wastewater, water quality and watershed management rules and  
2 regulations and associated requirements and standards applicable to  
3 the lands at the time of proposed acquisition have not changed since  
4 November 3, 1998;

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

7 (c) apply in the case of lands to be acquired in accordance with  
8 subsection c. of this section; or

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

12 j. (1) Commencing on the date of enactment of P.L. , c. (C. )  
13 (now before the Legislature as this bill) and until five years after that  
14 date, when the department, a local government unit, or a qualifying tax  
15 exempt nonprofit organization seeks to acquire lands in the Highlands  
16 preservation area for recreation and conservation purposes using  
17 constitutionally dedicated moneys in whole or in part or Green Acres  
18 bond act moneys in whole or in part, it shall conduct or cause to be  
19 conducted an appraisal or appraisals of the value of the lands that shall  
20 be made using (a) the rules and regulations adopted by the Department  
21 of Environmental Protection pursuant to P.L. , c. (C. ) (now before  
22 the Legislature as this bill) and the provisions of section 31 of that act  
23 applicable to the lands subject to the appraisal and in effect at the time  
24 of proposed acquisition, and (b) the rules and regulations adopted by  
25 the Department of Environmental Protection pursuant to any  
26 environmental land use or water law applicable to the lands subject to  
27 the appraisal and in effect on the day before the date of enactment of  
28 P.L. , c. (C. ) (now before the Legislature as this bill). The  
29 higher of those two values shall be utilized by the department, a local  
30 government unit, or a qualifying tax exempt nonprofit organization as  
31 the basis for negotiation with the landowner with respect to the  
32 acquisition price for the lands. The landowner shall be provided with  
33 both values determined pursuant to this paragraph.

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

37 The provisions of this paragraph shall be applicable only to lands  
38 the owner of which at the time of proposed acquisition is the same  
39 person who owned the lands on the date of enactment of P.L. , c.  
40 (C. ) (now before the Legislature as this bill) and who has owned the  
41 lands continuously since that enactment date, or is an immediate family  
42 member of that person.

43 (2) A landowner whose lands are subject to the provisions of  
44 paragraph (1) of this subsection shall choose to have the lands  
45 appraised in accordance with this subsection or in accordance with the  
46 provisions of either subsection d. or subsection i. of this section to the

1 extent that the subsection is applicable and has not expired.

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

5 (4) This subsection shall not:

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

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

11 (5) For the purposes of this subsection:

12 "Environmental land use or water law" means the "Freshwater  
13 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the  
14 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et  
15 seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1  
16 et seq.), "The Realty Improvement Sewerage and Facilities Act  
17 (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality  
18 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe  
19 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the  
20 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et  
21 seq.):

22 "Highlands preservation area" means the preservation area in the  
23 Highlands Region as defined pursuant to section of P.L. , c. (C. )  
24 (now before the Legislature as this bill); and

25 "Immediate family member" means spouse, child, sibling, aunt,  
26 uncle, niece, nephew, first cousin, grandparent, grandchild,  
27 father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,  
28 stepchild, stepbrother, stepsister, half brother, or half sister, whether  
29 the individual is related by blood, marriage, or adoption.

30 [j.] k. The department shall adopt guidelines for the evaluation and  
31 priority ranking process which shall be used in making decisions  
32 concerning the acquisition of lands by the State for recreation and  
33 conservation purposes using moneys from the Garden State Green  
34 Acres Preservation Trust Fund and from any other source. The  
35 guidelines, and any subsequent revisions thereto, shall be published in  
36 the New Jersey Register. The adoption of the guidelines or of the  
37 revisions thereto, shall not be subject to the requirements of the  
38 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
39 seq.).

40 [k.] l. In making decisions concerning the acquisition of lands by  
41 the State for recreation and conservation purposes using moneys from  
42 the Garden State Green Acres Preservation Trust Fund, in the  
43 evaluation and priority ranking process the department shall accord  
44 three times the weight to acquisitions of lands that would protect  
45 water resources, and two times the weight to acquisitions of lands that  
46 would protect flood-prone areas, as those criteria are compared to the

1 other criteria in the priority ranking process.

2 [l.] m. The department, pursuant to the "Administrative Procedure  
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and  
4 regulations that establish standards and requirements regulating any  
5 activity on lands acquired by the State for recreation and conservation  
6 purposes using constitutionally dedicated moneys to assure that the  
7 activity on those lands does not diminish the protection of surface  
8 water or groundwater resources.

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

12 (cf: P.L.2002, c.76, s.4)

13

14 53. Section 38 of P.L.1999, c.152 (C.13:8C-38) is amended to  
15 read as follows:

16 38. a. All acquisitions or grants made pursuant to section 37 of  
17 this act shall be made with respect to farmland devoted to farmland  
18 preservation under programs established by law.

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

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

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

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

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

45 (2) considering development easement values in counties,  
46 municipalities, and other areas (a) reasonably contiguous to, but

1 outside of, the pinelands area, which in the sole opinion of the  
2 committee constitute reasonable development easement values in the  
3 pinelands area for the purposes of this subsection, and (b) in the  
4 pinelands area where pinelands development credits are or may be  
5 utilized, which in the sole opinion of the committee constitute  
6 reasonable development easement values in the pinelands area for the  
7 purposes of this subsection;

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

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

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

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

21 g. (1) (a) For State fiscal years 2000 through 2004 only, when the  
22 committee, a local government unit, or a qualifying tax exempt  
23 nonprofit organization seeks to acquire a development easement on  
24 farmland or the fee simple title to farmland for farmland preservation  
25 purposes using constitutionally dedicated moneys in whole or in part,  
26 it shall conduct or cause to be conducted an appraisal or appraisals of  
27 the value of the lands that shall be made using the land use zoning of  
28 the lands (i) in effect at the time of proposed acquisition, and (ii) in  
29 effect on November 3, 1998 as if that land use zoning is still in effect  
30 at the time of proposed acquisition. The higher of those two values  
31 shall be utilized by the committee, a local government unit, or a  
32 qualifying tax exempt nonprofit organization as the basis for  
33 negotiation with the landowner with respect to the acquisition price  
34 for the lands. The landowner shall be provided with both values  
35 determined pursuant to this subparagraph.

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

39 (b) After the date of enactment of P.L.2001, c.315 and through  
40 June 30, 2004, in determining the two values required pursuant to  
41 subparagraph (a) of this paragraph, the appraisal shall be made using  
42 not only the land use zoning but also the Department of Environmental  
43 Protection wastewater, water quality and watershed management rules  
44 and regulations and associated requirements and standards applicable  
45 to the lands subject to the appraisal (i) in effect at the time of  
46 proposed acquisition, and (ii) in effect on November 3, 1998 as if

1 those rules and regulations and associated requirements and standards  
2 are still in effect at the time of proposed acquisition.

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

6 (3) This subsection shall not:

7 (a) apply if the land use zoning of the lands at the time of proposed  
8 acquisition, and the Department of Environmental Protection  
9 wastewater, water quality and watershed management rules and  
10 regulations and associated requirements and standards applicable to  
11 the lands at the time of proposed acquisition, have not changed since  
12 November 3, 1998;

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

15 (c) apply in the case of lands to be acquired in accordance with  
16 subsection e. of this section;

17 (d) apply to projects funded using constitutionally dedicated  
18 moneys appropriated pursuant to the annual appropriations act for  
19 State fiscal year 2000 (P.L.1999, c.138); or

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

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

28 i. (1) Commencing July 1, 2004 and until five years after the date  
29 of enactment of P.L.2001, c.315, when the committee, a local  
30 government unit, or a qualifying tax exempt nonprofit organization  
31 seeks to acquire a development easement on farmland or the fee simple  
32 title to farmland for farmland preservation purposes using  
33 constitutionally dedicated moneys in whole or in part, it shall conduct  
34 or cause to be conducted an appraisal or appraisals of the value of the  
35 lands that shall be made using the Department of Environmental  
36 Protection wastewater, water quality and watershed management rules  
37 and regulations and associated requirements and standards applicable  
38 to the lands subject to the appraisal (a) in effect at the time of  
39 proposed acquisition, and (b) in effect on November 3, 1998 as if  
40 those rules and regulations and associated requirements and standards  
41 are still in effect at the time of proposed acquisition. The higher of  
42 those two values shall be utilized by the committee, a local  
43 government unit, or a qualifying tax exempt nonprofit organization as  
44 the basis for negotiation with the landowner with respect to the  
45 acquisition price for the lands. The landowner shall be provided with  
46 both values determined pursuant to this paragraph. A landowner may

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

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

7 (3) This subsection shall not:

8 (a) apply if the Department of Environmental Protection  
9 wastewater, water quality and watershed management rules and  
10 regulations and associated requirements and standards applicable to  
11 the lands at the time of proposed acquisition have not changed since  
12 November 3, 1998;

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

15 (c) apply in the case of lands to be acquired in accordance with  
16 subsection e. of this section; or

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

20 j. (1) Commencing on the date of enactment of P.L. , c. (C. )  
21 (now before the Legislature as this bill) and until five years after that  
22 date, when the committee, a local government unit, or a qualifying tax  
23 exempt nonprofit organization seeks to acquire a development  
24 easement on farmland or the fee simple title to farmland for farmland  
25 preservation purposes in the Highlands preservation area using  
26 constitutionally dedicated moneys in whole or in part, it shall conduct  
27 or cause to be conducted an appraisal or appraisals of the value of the  
28 lands that shall be made using (a) the rules and regulations adopted by  
29 the Department of Environmental Protection pursuant to P.L. , c.  
30 (C. ) (now before the Legislature as this bill) and the provisions of  
31 section 31 of that act applicable to the lands subject to the appraisal  
32 and in effect at the time of proposed acquisition, and (b) the rules and  
33 regulations adopted by the Department of Environmental Protection  
34 pursuant to any environmental land use or water law applicable to the  
35 lands subject to the appraisal and in effect on the day before the date  
36 of enactment of P.L. , c. (C. ) (now before the Legislature as  
37 this bill). The higher of those two values shall be utilized by the  
38 committee, a local government unit, or a qualifying tax exempt  
39 nonprofit organization as the basis for negotiation with the landowner  
40 with respect to the acquisition price for the lands. The landowner shall  
41 be provided with both values determined pursuant to this paragraph.

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

45 The provisions of this paragraph shall be applicable only to lands  
46 the owner of which at the time of proposed acquisition is the same

1 person who owned the lands on the date of enactment of P.L. , c.  
2 (C. ) (now before the Legislature as this bill) and who has owned the  
3 lands continuously since that enactment date, is an immediate family  
4 member of that person, or is a farmer as defined by the committee.

5 (2) A landowner whose lands are subject to the provisions of  
6 paragraph (1) of this subsection shall choose to have the lands  
7 appraised in accordance with this subsection or in accordance with the  
8 provisions of either subsection g. or subsection i. of this section to the  
9 extent that the subsection is applicable and has not expired.

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

13 (4) This subsection shall not:

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

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

19 (5) For the purposes of this subsection:

20 "Environmental land use or water law" means the "Freshwater  
21 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the  
22 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et  
23 seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1  
24 et seq.), "The Realty Improvement Sewerage and Facilities Act  
25 (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality  
26 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe  
27 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the  
28 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et  
29 seq.);

30 "Highlands preservation area" means the preservation area in the  
31 Highlands Region as defined pursuant to section of P.L. , c. (C. )  
32 (now before the Legislature as this bill); and

33 "Immediate family member" means spouse, child, sibling, aunt,  
34 uncle, niece, nephew, first cousin, grandparent, grandchild,  
35 father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,  
36 stepchild, stepbrother, stepsister, half brother, or half sister, whether  
37 the individual is related by blood, marriage, or adoption.

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

46 Any rules and regulations adopted pursuant to this subsection shall

1 not apply to improvements on lands acquired prior to the adoption of  
2 the rules and regulations.

3 1. The committee shall consult with and solicit recommendations  
4 from the Highland Water Protection and Planning Council established  
5 pursuant to section 4 of P.L. , c. (C. ) (now before the  
6 Legislature as this bill) concerning farmland preservation strategies  
7 and acquisition plans in the Highlands Region as defined in section 3  
8 of P.L. , c. (C. ) (now before the Legislature as this bill).  
9 (cf: P.L.2002, c.76, s.6)

10

11 54. Section 13 of P.L.1974, c.118 (C.13:13A-13) is amended to  
12 read as follows:

13 13. a. The commission shall prepare, or cause to be prepared, and,  
14 after a public hearing, or public hearings, and pursuant to the  
15 provisions provided for in subsection 13 b. of this act, adopt a master  
16 plan or portion thereof for the physical development of the park, which  
17 plan may include proposals for various stages in the future  
18 development of the park, or amend the master plan. The master plan  
19 shall include a report presenting the objectives, assumptions,  
20 standards and principles which are embodied in the various  
21 interlocking portions of the master plan. The master plan shall be a  
22 composite of the one or more written proposals recommending the  
23 physical development and expansion of the park either in its entirety  
24 or a portion thereof which the commission shall prepare after meetings  
25 with the governing bodies of the affected municipalities and counties,  
26 and any agencies and instrumentalities thereof.

27 b. In preparing the master plan or any portion thereof or  
28 amendment thereto the commission shall give due consideration to:  
29 (1) the function of the canal as a major water supply facility in the  
30 State; (2) the necessity to provide recreational activities to the citizens  
31 of this State, including but not limited to, facilities, design capacities,  
32 and relationship to other available recreational areas; (3) existing  
33 historical sites and potential restorations or compatible development;  
34 (4) the range of uses and potential uses of the canal in the urban  
35 environments of the older, intensively developed communities through  
36 which it passes; and (5) designated wilderness areas to be kept as  
37 undeveloped, limited-access areas restricted to canoeing and hiking.  
38 In preparing the master plan or any portion thereof or amendment  
39 thereto the commission shall consider existing patterns of development  
40 and any relevant master plan or other plan of development, and shall  
41 insure widespread citizen involvement and participation in the planning  
42 process.

43 c. The commission shall act in support of local suggestions or  
44 desires to complement the park master plan. Consultation, planning,  
45 and technical expertise will be made available to local planning bodies  
46 that wish to implement land-use policy to enhance the park area. The

1 commission shall act on or refer complaints by citizens' groups or  
2 private residents who discover hazardous situations, pollution, or  
3 evidence of noncompliance with use regulations.

4 d. The commission shall review and approve, reject or modify, any  
5 State project planned or State permits issued in the park, and submit  
6 its decision to the Governor.

7 e. The commission shall consult with the Highlands Water  
8 Protection and Planning Council, established pursuant to section 4 of  
9 P.L. , c. (C. ) (now before the Legislature as this bill), on any  
10 provision of the park master plan that may impact upon or otherwise  
11 affect the Highlands Region or the Highlands regional master plan, as  
12 defined in section 3 of P.L. , c. (C. ) (now before the Legislature  
13 as this bill), and any such provision shall be consistent with the  
14 Highlands regional master plan adopted by the council pursuant to that  
15 act.

16 (cf: P.L.1974, c.118, s.13)

17

18 55. Section 14 of P.L.1974, c.118 (C.13:13A-14) is amended to  
19 read as follows:

20 14. a. The commission shall determine, after a public hearing, or  
21 public hearings held in Hunterdon, Somerset, Mercer, and Middlesex  
22 counties respectively, the extent and limits of the region to be  
23 designated the review zone. Any subsequent modification of [said]  
24 the review zone shall be made by the commission only after public  
25 hearings in the county or counties in which [such] the modification is  
26 to be made. All public hearings required pursuant to this section shall  
27 be held only after giving prior notice thereof by public advertisement  
28 once each week for [2] two consecutive weeks in such newspaper or  
29 newspapers selected by the chairman of the commission as will best  
30 give notice thereof. The last publication of such notice shall be not  
31 less than 10 days prior to the date set for the hearing.

32 b. The commission shall approve all State actions within the review  
33 zone that impact on the park, and insure that these actions conform as  
34 nearly as possible to the commission's master plan and relevant local  
35 plans or initiatives. The State actions which the commission shall  
36 review will include the operations of the Division of Water Resources  
37 concerning water supply and quality; the Division of Parks and  
38 Forestry in developing recreation facilities; and the activities of any  
39 other State department or agency that might affect the park.

40 c. The commission shall review and approve, reject, or modify any  
41 project within the review zone. The initial application for a proposed  
42 project within the zone shall be submitted by the applicant to the  
43 appropriate municipal reviewing agency. If approved by the agency,  
44 the application shall be sent to the commission for review. The  
45 commission shall review each proposed project in terms of its  
46 conformity with, or divergence from, the objectives of the

1 commission's master plan and shall: (1) advise the appropriate  
2 municipal reviewing agency that the project can proceed as proposed;  
3 (2) reject the application and so advise the appropriate municipal  
4 reviewing agency and the governing body of the municipality; or (3)  
5 require modifications or additional safeguards on the part of the  
6 applicant, and return the application to the appropriate municipal  
7 reviewing agency, which shall be responsible for insuring that these  
8 conditions are satisfied before issuing a permit. If no action is taken  
9 by the commission within a period of 45 days from the date of  
10 submission of the application to the commission by the municipal  
11 reviewing agency, this shall constitute an approval by the commission.  
12 The commission's decision shall be final and binding on the  
13 municipality, and the commission may, in the case of any violation or  
14 threat of a violation of a commission's decision by a municipality, or  
15 by the appropriate municipal reviewing agency, as the case may be,  
16 institute civil action (1) for injunctive relief; (2) to set aside and  
17 invalidate a decision made by a municipality in violation of this  
18 subsection; or (3) to restrain, correct or abate such violation. As used  
19 herein: (1) "project" means any structure, land use change, or public  
20 improvements for which a permit from, or determination by, the  
21 municipality is required, which shall include, but not be limited to,  
22 building permits, zoning variances, and excavation permits; and (2)  
23 "agency" means any body or instrumentality of the municipality  
24 responsible for the issuance of permits or the approval of projects, as  
25 herein defined, which shall include, but not be limited to, governing  
26 bodies, planning and zoning boards, building inspectors, managers and  
27 municipal engineers.

28 d. To the extent that any action the commission takes pursuant to  
29 this section may impact upon or otherwise affect the Highlands Region  
30 or the Highlands regional master plan, as defined in section 3 of  
31 P.L. , c. (C. ) (now before the Legislature as this bill), the  
32 commission shall consult with the Highlands Water Protection and  
33 Planning Council, established pursuant to section 4 of P.L. , c.  
34 (C. ) (now before the Legislature as this bill), and any such action  
35 taken shall be consistent with Highland regional master plan adopted  
36 by the council pursuant to that act.

37 (cf: P.L.1974, c.118, s.14)

38

39 56. Section 2 of P.L.1997, c.144 (C.27:5-9.1) is amended to read  
40 as follows:

41 2. Any billboard or outdoor advertising sign licensed and permitted  
42 pursuant to the "Roadside Sign Control and Outdoor Advertising  
43 Act," P.L.1991, c.413 (C.27:5-5 et seq.), and proposed to be erected  
44 on or above any State right-of-way or any real property of the  
45 department shall be subject to local government zoning ordinances,  
46 applicable local government building permit requirements, and in the

1 pinelands area, shall be subject to the provisions of the comprehensive  
2 management plan prepared and adopted by the Pinelands Commission  
3 pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8), and in the  
4 Highlands Region, shall be subject to the provisions of the "Highland  
5 Water Protection and Planning Act," P.L. , c. (C. ) (now before  
6 the Legislature as this bill), any rules and regulations adopted pursuant  
7 thereto, and the Highlands regional master plan adopted by the  
8 Highlands Water Protection and Planning Council pursuant to section  
9 8 of that act .

10 (cf: P.L.1997, c.144, s.2)

11

12 57. R.S.32:14-5 is amended to read as follows:

13 32:14-5. a. Palisades Interstate Park Commission shall, from time  
14 to time, select and locate such lands lying between the top or steep  
15 edge of the Palisades or the crest of the slope in places where the steep  
16 Palisade rocks are absent and the high-water line of the Hudson river,  
17 from the New York State line on the north, to a line beginning at the  
18 intersection of the southern line of the old Fort Lee dock or landing  
19 with the high-water line of the Hudson river and running thence in a  
20 westerly direction and at right angles to said high-water line of the  
21 Hudson river to the east side of the river road running from Edgewater  
22 to Fort Lee, in Bergen county, on the south, and such lands or rights  
23 in lands belonging to persons other than the State, as may lie between  
24 the exterior bulkhead line established in the Hudson river and the  
25 high-water line of the Hudson river, as may, in the opinion of the  
26 Palisades Interstate Park Commission, be proper and necessary to be  
27 reserved for the purpose of establishing a park and thereby preserving  
28 the scenic beauty of the Palisades.

29 b. The Palisades Interstate Park Commission, in cooperation with  
30 the North Jersey District Water Supply Commission and in  
31 consultation with the New Jersey Department of Environmental  
32 Protection and the Highlands Water Protection and Planning Council,  
33 may, from time to time, select and locate such lands lying within the  
34 Highlands or Skylands areas of Bergen, Hunterdon, Morris, Passaic,  
35 Somerset and Warren counties in the State of New Jersey, including  
36 lands in those areas lying within the North Jersey Water Supply  
37 District, as may, in the opinion of the Palisades Interstate Park  
38 Commission and the North Jersey District Water Supply Commission,  
39 in consultation with the department and the Highlands Water  
40 Protection and Planning Council, be proper and necessary to be  
41 reserved for establishing a park:

42 (1) to preserve the scenic beauty of those areas;

43 (2) for the purposes of recreation and conservation, which shall  
44 include hunting and fishing, or historic preservation; or

45 (3) for the purposes of watershed conservation or protecting,  
46 maintaining, or enhancing the quality and quantity of water supplies.

1 c. Except as authorized for the purposes specified by R.S.32:15-1  
2 et seq. and R.S.32:16-1 et seq. with regard to the location,  
3 construction, maintenance, and operation of the Henry Hudson Drive  
4 and the Palisades Interstate Parkway in Bergen county, the Palisades  
5 Interstate Park Commission shall not acquire by condemnation any  
6 lands described in subsections a. and b. of this section. Any such lands  
7 shall be acquired by the Palisades Interstate Park Commission only  
8 through a sale by a willing seller.

9 (cf: P.L.1995, c.274, s.2)

10  
11 58. Section 5 of P.L.1999, c.402 (C.32:20A-5) is amended to read  
12 as follows:

13 5. a. The duties of the commission shall be to:

14 [a.] (1) assess present and projected development, land use, and  
15 land management practices and patterns, and identify actual and  
16 potential environmental threats and problems, around Greenwood  
17 Lake and within its watershed, and determine the effects of those  
18 practices and patterns, threats, and problems upon the natural, scenic,  
19 and recreational resources of Greenwood Lake and its watershed;

20 [b.] (2) develop recommended regulations, procedures, policies,  
21 planning strategies, and model ordinances and resolutions pertaining  
22 to the protection, preservation, maintenance, management, and  
23 enhancement of Greenwood Lake and its watershed, which would be  
24 implemented as appropriate on a voluntary basis by those entities with  
25 representatives on the commission;

26 [c.] (3) coordinate environmental clean up, maintenance, and  
27 protection efforts undertaken, for the benefit of Greenwood Lake and  
28 its watershed, by those entities with representatives on the  
29 commission;

30 [d.] (4) coordinate with the New Jersey Department of  
31 Environmental Protection's watershed management program for the  
32 area that includes Greenwood Lake;

33 [e.] (5) recommend appropriate state legislation and administrative  
34 action pertaining to the protection, preservation, maintenance,  
35 management, and enhancement of Greenwood Lake and its watershed;

36 [f.] (6) advocate, and where appropriate, act as a coordinating,  
37 distributing, or recipient agency for, federal, state, or private funding  
38 of environmental cleanup, maintenance, and protection projects for  
39 Greenwood Lake and its watershed, which projects may include the  
40 work of the commission; and

41 [g.] (7) take such other action as may be appropriate or necessary  
42 to further the purpose of this act.

43 b. The commission shall consult with the Highlands Water  
44 Protection and Planning Council, established pursuant to section 4 of  
45 P.L. , c. (C. ) (now before the Legislature as this bill), in carrying  
46 out its duties as prescribed pursuant to subsection a. of this section.

1 Any action taken by the commission that may impact upon or  
2 otherwise affect the Highlands preservation area, as defined in section  
3 3 of P.L. , c. (C. ) (now before the Legislature as this bill), shall  
4 be consistent with the Highlands regional master plan adopted by the  
5 council pursuant to section 8 of that act.

6 (cf: P.L.1999, c.402, s.5)

7

8 59. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to  
9 read as follows:

10 19. Preparation; contents; modification.

11 a. The planning board may prepare and, after public hearing, adopt  
12 or amend a master plan or component parts thereof, to guide the use  
13 of lands within the municipality in a manner which protects public  
14 health and safety and promotes the general welfare.

15 b. The master plan shall generally comprise a report or statement  
16 and land use and development proposals, with maps, diagrams and  
17 text, presenting, at least the following elements (1) and (2) and, where  
18 appropriate, the following elements (3) through (13):

19 (1) A statement of objectives, principles, assumptions, policies and  
20 standards upon which the constituent proposals for the physical,  
21 economic and social development of the municipality are based;

22 (2) A land use plan element (a) taking into account and stating its  
23 relationship to the statement provided for in paragraph (1) hereof, and  
24 other master plan elements provided for in paragraphs (3) through (13)  
25 hereof and natural conditions, including, but not necessarily limited to,  
26 topography, soil conditions, water supply, drainage, flood plain areas,  
27 marshes, and woodlands; (b) showing the existing and proposed  
28 location, extent and intensity of development of land to be used in the  
29 future for varying types of residential, commercial, industrial,  
30 agricultural, recreational, educational and other public and private  
31 purposes or combination of purposes; and stating the relationship  
32 thereof to the existing and any proposed zone plan and zoning  
33 ordinance; and (c) showing the existing and proposed location of any  
34 airports and the boundaries of any airport safety zones delineated  
35 pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260  
36 (C.6:1-80 et seq.); and (d) including a statement of the standards of  
37 population density and development intensity recommended for the  
38 municipality;

39 (3) A housing plan element pursuant to section 10 of P.L.1985,  
40 c.222 (C.52:27D-310), including, but not limited to, residential  
41 standards and proposals for the construction and improvement of  
42 housing;

43 (4) A circulation plan element showing the location and types of  
44 facilities for all modes of transportation required for the efficient  
45 movement of people and goods into, about, and through the  
46 municipality, taking into account the functional highway classification

1 system of the Federal Highway Administration and the types,  
2 locations, conditions and availability of existing and proposed  
3 transportation facilities, including air, water, road and rail;

4 (5) A utility service plan element analyzing the need for and  
5 showing the future general location of water supply and distribution  
6 facilities, drainage and flood control facilities, sewerage and waste  
7 treatment, solid waste disposal and provision for other related utilities,  
8 and including any storm water management plan required pursuant to  
9 the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.);

10 (6) A community facilities plan element showing the existing and  
11 proposed location and type of educational or cultural facilities, historic  
12 sites, libraries, hospitals, firehouses, police stations and other related  
13 facilities, including their relation to the surrounding areas;

14 (7) A recreation plan element showing a comprehensive system of  
15 areas and public sites for recreation;

16 (8) A conservation plan element providing for the preservation,  
17 conservation, and utilization of natural resources, including, to the  
18 extent appropriate, energy, open space, water supply, forests, soil,  
19 marshes, wetlands, harbors, rivers and other waters, fisheries,  
20 endangered or threatened species wildlife and other resources, and  
21 which systemically analyzes the impact of each other component and  
22 element of the master plan on the present and future preservation,  
23 conservation and utilization of those resources;

24 (9) An economic plan element considering all aspects of economic  
25 development and sustained economic vitality, including (a) a  
26 comparison of the types of employment expected to be provided by the  
27 economic development to be promoted with the characteristics of the  
28 labor pool resident in the municipality and nearby areas and (b) an  
29 analysis of the stability and diversity of the economic development to  
30 be promoted;

31 (10) A historic preservation plan element: (a) indicating the location  
32 and significance of historic sites and historic districts; (b) identifying  
33 the standards used to assess worthiness for historic site or district  
34 identification; and (c) analyzing the impact of each component and  
35 element of the master plan on the preservation of historic sites and  
36 districts;

37 (11) Appendices or separate reports containing the technical  
38 foundation for the master plan and its constituent elements;

39 (12) A recycling plan element which incorporates the State  
40 Recycling Plan goals, including provisions for the collection,  
41 disposition and recycling of recyclable materials designated in the  
42 municipal recycling ordinance, and for the collection, disposition and  
43 recycling of recyclable materials within any development proposal for  
44 the construction of 50 or more units of single-family residential  
45 housing or 25 or more units of multi-family residential housing and any  
46 commercial or industrial development proposal for the utilization of

1 1,000 square feet or more of land; and

2 (13) A farmland preservation plan element, which shall include: an  
3 inventory of farm properties and a map illustrating significant areas of  
4 agricultural land; a statement showing that municipal ordinances  
5 support and promote agriculture as a business; and a plan for  
6 preserving as much farmland as possible in the short term by  
7 leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et  
8 al.) through a variety of mechanisms including, but not limited to,  
9 utilizing option agreements, installment purchases, and encouraging  
10 donations of permanent development easements.

11 c. The master plan and its plan elements may be divided into  
12 subplans and subplan elements projected according to periods of time  
13 or staging sequences.

14 d. The master plan shall include a specific policy statement  
15 indicating the relationship of the proposed development of the  
16 municipality, as developed in the master plan to (1) the master plans  
17 of contiguous municipalities, (2) the master plan of the county in  
18 which the municipality is located, (3) the State Development and  
19 Redevelopment Plan adopted pursuant to the "State Planning Act,"  
20 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
21 (4) the district solid waste management plan required pursuant to the  
22 provisions of the "Solid Waste Management Act," P.L.1970, c.39  
23 (C.13:1E-1 et seq.) of the county in which the municipality is located.

24 In the case of a municipality situated within the Highlands Region,  
25 as defined pursuant to section 3 of P.L. , c. (C. ) (now before  
26 the Legislature as this bill), the master plan shall include a specific  
27 policy statement indicating the relationship of the proposed  
28 development of the municipality, as developed in the master plan, to  
29 the Highlands regional master plan adopted pursuant to section 4 of  
30 P.L. , c. (C. ) (now before the Legislature as this bill).

31 (cf: P.L.1999, c.180, s.2)

32

33 60. R.S.48:3-7 is amended to read as follow:

34 48:3-7. a. No public utility shall, without the approval of the  
35 board, sell, lease, mortgage or otherwise dispose of or encumber its  
36 property, franchises, privileges or rights, or any part thereof; or merge  
37 or consolidate its property, franchises, privileges or rights, or any part  
38 thereof, with that of any other public utility.

39 Where, by the proposed sale, lease or other disposition of all or a  
40 substantial portion of its property, any franchise or franchises,  
41 privileges or rights, or any part thereof or merger or consolidation  
42 thereof as set forth herein, it appears that the public utility or a wholly  
43 owned subsidiary thereof may be unable to fulfill its obligation to any  
44 employees thereof with respect to pension benefits previously enjoyed,  
45 whether vested or contingent, the board shall not grant its approval  
46 unless the public utility seeking the board's approval for such sale,

1 lease or other disposition assumes such responsibility as will be  
2 sufficient to provide that all such obligations to employees will be  
3 satisfied as they become due.

4 Every sale, mortgage, lease, disposition, encumbrance, merger or  
5 consolidation made in violation of this section shall be void.

6 Nothing herein shall prevent the sale, lease or other disposition by  
7 any public utility of any of its property in the ordinary course of  
8 business, nor require the approval of the board to any grant,  
9 conveyance or release of any property or interest therein heretofore  
10 made or hereafter to be made by any public utility to the United States,  
11 State or any county or municipality or any agency, authority or  
12 subdivision thereof, for public use.

13 The approval of the board shall not be required to validate the title  
14 of the United States, State or any county or municipality or any  
15 agency, authority or subdivision thereof, to any lands or interest  
16 therein heretofore condemned or hereafter to be condemned by the  
17 United States, State or any county or municipality or any agency,  
18 authority or subdivision thereof for public use.

19 b. Notwithstanding any law, rule, regulation or order to the  
20 contrary, an autobus public utility regulated by and subject to the  
21 provisions of Title 48 of the Revised Statutes may, without the  
22 approval of the Department of Transportation, sell, lease, mortgage or  
23 otherwise dispose of or encumber its property, or any part thereof,  
24 except that approval of the Department of Transportation shall be  
25 required for the following:

26 (1) the sale of 60% or more of its property within a 12-month  
27 period;

28 (2) a merger or consolidation of its property, franchises, privileges  
29 or rights; or

30 (3) the sale of any of its franchises, privileges or rights.

31 Notice of the sale, purchase or lease of any autobus or other vehicle  
32 subject to regulation under Title 48 of the Revised Statutes shall be  
33 provided to the Department of Transportation as the department shall  
34 require.

35 c. Except as otherwise provided in subsection e. of this section, no  
36 solid waste collector as defined in section 3 of P.L.1970, c.40  
37 (C.48:13A-3) shall, without the approval of the Department of  
38 Environmental Protection:

39 (1) sell, lease, mortgage or otherwise dispose of or encumber its  
40 property, including customer lists; or

41 (2) merge or consolidate its property, including customer lists, with  
42 that of any other person or business concern, whether or not that  
43 person or business concern is engaged in the business of solid waste  
44 collection or solid waste disposal pursuant to the provisions of  
45 P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
46 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

1 d. Any solid waste collector seeking approval for any transaction  
2 enumerated in subsection c. of this section shall file with the  
3 department, on forms and in a manner prescribed by the department,  
4 a notice of intent at least 30 days prior to the completion of the  
5 transaction.

6 (1) The department shall promptly review all notices filed pursuant  
7 to this subsection. The department may, within 30 days of receipt of  
8 a notice of intent, request that the solid waste collector submit  
9 additional information to assist in its review if it deems that such  
10 information is necessary. If no such request is made, the transaction  
11 shall be deemed to have been approved. In the event that additional  
12 information is requested, the department shall outline, in writing, why  
13 it deems such information necessary to make an informed decision on  
14 the impact of the transaction on effective competition.

15 (2) The department shall approve or deny a transaction within 60  
16 days of receipt of all requested information. In the event that the  
17 department fails to take action on a transaction within the 60-day  
18 period specified herein, then the transaction shall be deemed to have  
19 been approved.

20 (3) The department shall approve a transaction unless it makes a  
21 determination pursuant to the provisions of section 19 of P.L.1991,  
22 c.381 (C.48:13A-7.19) that the proposed sale, lease, mortgage,  
23 disposition, encumbrance, merger or consolidation would result in a  
24 lack of effective competition.

25 The department shall prescribe and provide upon request all  
26 necessary forms for the implementation of the notification  
27 requirements of this subsection.

28 e. (1) Any solid waste collector may, without the approval of the  
29 department, purchase, finance or lease any equipment, including  
30 collection or haulage vehicles.

31 (2) Any solid waste collector may, without the approval of the  
32 department, sell or otherwise dispose of its collection or haulage  
33 vehicles; except that no solid waste collector shall, without the  
34 approval of the department in the manner provided in subsection d. of  
35 this section, sell or dispose of 33% or more of its collection or haulage  
36 vehicles within a 12-month period.

37 f. (1) The owner or operator of a privately-owned sanitary landfill  
38 facility may, without the approval of the Department of Environmental  
39 Protection, sell or otherwise dispose of its assets except that the prior  
40 approval of the department shall be required (a) to sell all assets  
41 associated with the sanitary landfill facility or a portion thereof  
42 sufficient to transfer the operation of the sanitary landfill facility to a  
43 new owner or operator; (b) to sell a controlling ownership interest in  
44 the sanitary landfill facility; or (c) to merge or consolidate its property  
45 with that of any other person or business concern, whether or not that  
46 person or business concern is engaged in the business of solid waste

1 disposal pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et  
2 seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act.

3 (2) Any owner or operator seeking approval for any transaction  
4 enumerated in this subsection shall file with the department an  
5 application therefor, on forms and in a manner prescribed by the  
6 department. The department shall promptly review all applications  
7 filed pursuant to this subsection and shall serve requests for  
8 information regarding any transaction within 30 days following the  
9 filing of an application if the department deems that such information  
10 is necessary. The department shall approve or deny the transaction  
11 within 60 days of receipt of all requested information. In the event  
12 that the department fails to take action on a transaction within the  
13 60-day period specified herein, then the transaction shall be deemed to  
14 have been approved.

15 As used in this section, "business concern" means any corporation,  
16 association, firm, partnership, sole proprietorship, trust or other form  
17 of commercial organization; and "privately-owned sanitary landfill  
18 facility" means a commercial sanitary landfill facility which is owned  
19 and operated by a private person, corporation or other organization  
20 and includes all appurtenances and related improvements used at the  
21 site for the transfer, processing or disposal of solid waste.

22 g. No public water utility shall sell or otherwise convey any land  
23 it owns that is located in the Highlands Region, as defined in section  
24 3 of P.L. , c. (C. ) (now before the Legislature as this bill), and  
25 is utilized for the purpose of protecting a public water supply, except  
26 as may be allowed by the Commissioner of Environmental Protection,  
27 with the concurrence of the board, only for the purposes authorized  
28 pursuant to section 27 of P.L. , c. (C. ) (now before the  
29 Legislature as this bill).

30 (cf: P.L.2003, c.169, s.17)

31

32 61. Section 1 of P.L.1985, c.398 (C.52:18A-196) is amended to  
33 read as follows:

34 1. The Legislature finds and declares that:

35 a. New Jersey, the nation's most densely populated State, requires  
36 sound and integrated Statewide planning and the coordination of  
37 Statewide planning with local and regional planning in order to  
38 conserve its natural resources, revitalize its urban centers, protect the  
39 quality of its environment, and provide needed housing and adequate  
40 public services at a reasonable cost while promoting beneficial  
41 economic growth, development and renewal;

42 b. Significant economies, efficiencies and savings in the  
43 development process would be realized by private sector enterprise  
44 and by public sector development agencies if the several levels of  
45 government would cooperate in the preparation of and adherence to  
46 sound and integrated plans;

1 c. It is of urgent importance that the State Development Guide  
2 Plan be replaced by a State Development and Redevelopment Plan  
3 designed for use as a tool for assessing suitable locations for  
4 infrastructure, housing, economic growth and conservation;

5 d. It is in the public interest to encourage development,  
6 redevelopment and economic growth in locations that are well situated  
7 with respect to present or anticipated public services and facilities,  
8 giving appropriate priority to the redevelopment, repair, rehabilitation  
9 or replacement of existing facilities and to discourage development  
10 where it may impair or destroy natural resources or environmental  
11 qualities that are vital to the health and well-being of the present and  
12 future citizens of this State;

13 e. A cooperative planning process that involves the full  
14 participation of State, regional, county and local governments as well  
15 as other public and private sector interests will enhance prudent and  
16 rational development, redevelopment and conservation policies and the  
17 formulation of sound and consistent regional plans and planning  
18 criteria;

19 f. Since the overwhelming majority of New Jersey land use  
20 planning and development review occurs at the local level, it is  
21 important to provide local governments in this State with the technical  
22 resources and guidance necessary to assist them in developing land use  
23 plans and procedures which are based on sound planning information  
24 and practice, and to facilitate the development of local plans which are  
25 consistent with State and regional plans and programs;

26 g. An increasing concentration of the poor and minorities in older  
27 urban areas jeopardizes the future well-being of this State, and a sound  
28 and comprehensive planning process will facilitate the provision of  
29 equal social and economic opportunity so that all of New Jersey's  
30 citizens can benefit from growth, development and redevelopment;

31 h. An adequate response to judicial mandates respecting housing  
32 for low- and moderate-income persons requires sound planning to  
33 prevent sprawl and to promote suitable use of land; and

34 i. These purposes can be best achieved through the establishment  
35 of a State planning commission consisting of representatives from the  
36 executive and legislative branches of State government, local  
37 government, the general public and the planning community.

38 (cf: P.L.1985, c.398, s.1)

39  
40 62. Section 4 of P.L.1985, c.398 (C.52:18A-199) is amended to  
41 read as follows:

42 4. The commission shall:

43 a. Prepare and adopt within 36 months after the enactment of [this  
44 act] P.L.1985, c.398 (C.52:18A-196 et al.) , and revise and readopt  
45 at least every three years thereafter, the State Development and  
46 Redevelopment Plan, which shall provide a coordinated, integrated and

1 comprehensive plan for the growth, development, renewal and  
2 conservation of the State and its regions and which shall identify areas  
3 for growth, agriculture, open space conservation and other appropriate  
4 designations;

5 b. Prepare and adopt as part of the plan a long-term Infrastructure  
6 Needs Assessment, which shall provide information on present and  
7 prospective conditions, needs and costs with regard to State, county  
8 and municipal capital facilities, including water, sewerage,  
9 transportation, solid waste, drainage, flood protection, shore  
10 protection and related capital facilities;

11 c. Develop and promote procedures to facilitate cooperation and  
12 coordination among State agencies, regional entities, and local  
13 governments with regard to the development of plans, programs and  
14 policies which affect land use, environmental, capital and economic  
15 development issues;

16 d. Provide technical assistance to local governments and regional  
17 entities in order to encourage the use of the most effective and  
18 efficient planning and development review data, tools and procedures;

19 e. Periodically review State, regional, and local government  
20 planning procedures and relationships and recommend to the Governor  
21 and the Legislature administrative or legislative action to promote a  
22 more efficient and effective planning process;

23 f. Review any bill introduced in either house of the Legislature  
24 which appropriates funds for a capital project and may study the  
25 necessity, desirability and relative priority of the appropriation by  
26 reference to the State Development and Redevelopment Plan, and may  
27 make recommendations to the Legislature and to the Governor  
28 concerning the bill; and

29 g. Take all actions necessary and proper to carry out the provisions  
30 of **[this act] P.L.1985, c.398 (C.52:18A-196 et al.)**.  
31 (cf: P.L.1987, c.308, s.1)

32  
33 63. Section 5 of P.L.1985, c.398 (C.52:18A-200) is amended to  
34 read as follows:

35 5. The State Development and Redevelopment Plan shall be  
36 designed to represent a balance of development and conservation  
37 objectives best suited to meet the needs of the State. The plan shall:

38 a. Protect the natural resources and qualities of the State,  
39 including, but not limited to, agricultural development areas, fresh and  
40 saltwater wetlands, flood plains, stream corridors, aquifer recharge  
41 areas, steep slopes, areas of unique flora and fauna, and areas with  
42 scenic, historic, cultural and recreational values;

43 b. Promote development and redevelopment in a manner consistent  
44 with sound planning and where infrastructure can be provided at  
45 private expense or with reasonable expenditures of public funds. This  
46 should not be construed to give preferential treatment to new

1 construction;

2 c. Consider input from State, regional, county and municipal  
3 entities concerning their land use, environmental, capital and economic  
4 development plans, including to the extent practicable any State and  
5 regional plans concerning natural resources or infrastructure elements;

6 d. Identify areas for growth, limited growth, agriculture, open  
7 space conservation and other appropriate designations that the  
8 commission may deem necessary;

9 e. Incorporate a reference guide of technical planning standards  
10 and guidelines used in the preparation of the plan; and

11 f. Coordinate planning activities and establish Statewide planning  
12 objectives in the following areas: land use, housing, economic  
13 development, transportation, natural resource conservation,  
14 agriculture and farmland retention, recreation, urban and suburban  
15 redevelopment, historic preservation, public facilities and services, and  
16 intergovernmental coordination.

17 (cf: P.L.1985, c.398, s.5)

18

19 64. Section 6 of P.L.1985, c.398 (C.52:18A-201) is amended to  
20 read as follows:

21 6. a. There is established in the Department of the Treasury the  
22 Office of State Planning. The director of the office shall be appointed  
23 by and serve at the pleasure of the Governor. The director shall  
24 supervise and direct the activities of the office and shall serve as the  
25 secretary and principal executive officer of the State Planning  
26 Commission.

27 b. The Office of State Planning shall assist the commission in the  
28 performance of its duties and shall:

29 (1) Publish an annual report on the status of the State Development  
30 and Redevelopment Plan which shall describe the progress towards  
31 achieving the goals of the plan, the degree of consistency achieved  
32 among municipal, county, regional, and State plans, the capital needs  
33 of the State, and progress towards providing housing where such need  
34 is indicated;

35 (2) Provide planning service to other agencies or instrumentalities  
36 of State government, review the plans prepared by them, and  
37 coordinate planning to avoid or mitigate conflicts between plans;

38 (3) Provide advice and assistance to regional, county and local  
39 planning units;

40 (4) Review and comment on the plans of interstate agencies where  
41 the plans affect this State;

42 (5) Compile quantitative current estimates and Statewide forecasts  
43 for population, employment, housing and land needs for development  
44 and redevelopment; and

45 (6) Prepare and submit to the State Planning Commission, as an aid  
46 in the preparation of the State Development and Redevelopment Plan,

1 alternate growth and development strategies which are likely to  
2 produce favorable economic, environmental and social results.

3 c. The director shall ensure that the responsibilities and duties of  
4 the commission are fulfilled, and shall represent the commission and  
5 promote its activities before government agencies, public and private  
6 interest groups and the general public, and shall undertake or direct  
7 such other activities as the commission shall direct or as may be  
8 necessary to carry out the purposes of [this act] P.L.1985, c.398  
9 (C.52:18A-196 et al.).

10 d. With the consent of the commission, the director shall assign to  
11 the commission from the staff of the office at least two full-time  
12 planners, a full-time liaison to local and county governments and  
13 regional entities, and such other staff, clerical, stenographic and expert  
14 assistance as [he] the director shall deem necessary for the fulfillment  
15 of the commission's responsibilities and duties.

16 (cf: P.L.1985, c.398, s.6)

17

18 65. Section 7 of P.L.1985, c.398 (C.52:18A-202) is amended to  
19 read as follows:

20 7. a. In preparing, maintaining and revising the State Development  
21 and Redevelopment Plan, the commission shall solicit and give due  
22 consideration to the plans, comments and advice of each county and  
23 municipality, State agencies designated by the commission, the  
24 Highlands Water Protection and Planning Council established pursuant  
25 to section 4 of P.L. , c. (C. ) (now before the Legislature as this  
26 bill), and other local and regional entities. Prior to the adoption of  
27 each plan, the commission shall prepare and distribute a preliminary  
28 plan to each county planning board, municipal planning board and  
29 other requesting parties, including State agencies, the Highlands Water  
30 Protection and Planning Council, and metropolitan planning  
31 organizations. Not less than 45 nor more than 90 days thereafter, the  
32 commission shall conduct a joint public informational meeting with  
33 each county planning board in each county and with the Highlands  
34 Water Protection and Planning Council for the purpose of providing  
35 information on the plan, responding to inquiries concerning the plan,  
36 and receiving informal comments and recommendations from county  
37 and municipal planning boards, local public officials, the Highlands  
38 Water Protection and Planning Council, and other interested parties.

39 b. The commission shall negotiate plan cross-acceptance with each  
40 county planning board, which shall solicit and receive any findings,  
41 recommendations and objections concerning the plan from local  
42 planning bodies. Each county planning board shall negotiate plan  
43 cross-acceptance among the local planning bodies within the county,  
44 unless it shall notify the commission in writing within 45 days of the  
45 receipt of the preliminary plan that it waives this responsibility, in  
46 which case the commission shall designate an appropriate entity, or

1 itself, to assume this responsibility. Each board or designated entity  
2 shall, within ten months of receipt of the preliminary plan, file with the  
3 commission a formal report of findings, recommendations and  
4 objections concerning the plan, including a description of the degree  
5 of consistency and any remaining inconsistency between the  
6 preliminary plan and county and municipal plans. In any event, should  
7 any municipality's plan remain inconsistent with the State Development  
8 and Redevelopment Plan after the completion of the cross-acceptance  
9 process, the municipality may file its own report with the State  
10 Planning Commission, notwithstanding the fact that the [County  
11 Planning Board] county planning board has filed its report with the  
12 State Planning Commission. The term cross-acceptance means a  
13 process of comparison of planning policies among governmental levels  
14 with the purpose of attaining compatibility between local, county,  
15 regional, and State plans. The process is designed to result in a  
16 written statement specifying areas of agreement or disagreement and  
17 areas requiring modification by parties to the cross-acceptance.

18 Notwithstanding any provision of this section to the contrary, any  
19 municipality or county in the Highlands Region, as defined in section  
20 3 of P.L. , c. (C. ) (now before the Legislature as this bill),  
21 whose municipal master plan and development regulations or county  
22 master plan and associated regulations, respectively, have been  
23 approved by the Highlands Water Protection and Planning Council  
24 pursuant to sections 14 or 15 of P.L. , c. (C. ) (now before the  
25 Legislature as this bill) to be in conformance with the Highlands  
26 regional master plan adopted by the council pursuant to section 8 of  
27 P.L. , c. (C. ) (now before the Legislature as this bill) shall be  
28 exempt from the cross-acceptance process required by this subsection  
29 for those portions of the municipality or county lying within the  
30 Highlands Region.

31 c. Upon consideration of the formal reports of the county planning  
32 boards, the commission shall prepare and distribute a final plan to  
33 county and municipal planning boards, the Highlands Water Protection  
34 and Planning Council, and other interested parties. The commission  
35 shall conduct not less than six public hearings in different locations  
36 throughout the State for the purpose of receiving comments on the  
37 final plan. The commission shall give at least 30 days' public notice of  
38 each hearing in advertisements in at least two newspapers which  
39 circulate in the area served by the hearing and at least 30 days' notice  
40 to the governing body and planning board of each county and  
41 municipality in the area served by the hearing and to the Highlands  
42 Water Protection and Planning Council for any area in the Highlands  
43 Region served by the hearing.

44 d. Taking full account of the testimony presented at the public  
45 hearings, the commission shall make revisions in the plan as it deems  
46 necessary and appropriate and adopt the final plan by a majority vote

1 of its authorized membership no later than 60 days after the final  
2 public hearing.

3 (cf: P.L.1998, c.109, s.1)

4

5 66. Section 2 of P.L.1989, c.332 (C.52:18A-202.2) is amended to  
6 read as follows:

7 2. a. The Office of State Planning in consultation with the Office  
8 of Economic Policy, shall utilize the following:

9 (1) Conduct portions of these studies using its own staff;

10 (2) Contract with other State agencies to conduct portions of these  
11 studies; and

12 (3) Contract with an independent firm or an institution of higher  
13 learning to conduct portions of these studies.

14 b. Any portion of the studies conducted by the Office of State  
15 Planning, or any other State agency, shall be subject to review by an  
16 independent firm or an institution of higher learning.

17 c. The Assessment Study and the oversight review shall be  
18 submitted in the form of a written report to the State Planning  
19 Commission for distribution to the Governor, the Legislature,  
20 appropriate regional entities, and the governing bodies of each county  
21 and municipality in the State during the cross-acceptance process and  
22 prior to the adoption of the Final Plan.

23 d. A period extending from at least 45 days prior to the first of six  
24 public hearings, which are required under the State Planning Act,  
25 P.L.1985, c.398 (C.52:18A-196 et seq.), to 30 days following the last  
26 public hearing shall be provided for counties and municipalities to  
27 review and respond to the studies. Requests for revisions to the  
28 Interim Plan shall be considered by the State Planning Commission in  
29 the formulation of the Final Plan.

30 (cf: P.L.1989, c.332, s.2)

31

32 67. Section 8 of P.L.1985, c.398 (C.52:18A-203) is amended to  
33 read as follows:

34 8. The commission shall adopt rules and regulations to carry out  
35 its purposes, including procedures to facilitate the solicitation and  
36 receipt of comments in the preparation of the preliminary and final  
37 plan and to ensure a process for comparison of the plan with county  
38 and municipal master plans and regional plans, and procedures for  
39 coordinating the information collection, storage and retrieval activities  
40 of the various State agencies.

41 (cf: P.L.1985, c.398, s.8)

42

43 68. Section 9 of P.L.1985, c.398 (C.52:18A-204) is amended to  
44 read as follows:

45 9. The commission shall be entitled to call to its assistance any  
46 personnel of any State agency, regional entity, or county, municipality

1 or political subdivision thereof as it may require in order to perform its  
2 duties. The officers and personnel of any State agency, regional  
3 entity, or county, municipality or political subdivision thereof and any  
4 other person may serve at the request of the commission upon any  
5 advisory committee as the commission may create without forfeiture  
6 of office or employment and with no loss or diminution in the  
7 compensation, status, rights and privileges which they otherwise enjoy.  
8 (cf: P.L.1985, c.398, s.9)

9

10 69. Section 10 of P.L.1985, c.398 (C.52:18A-205) is amended to  
11 read as follows:

12 10. Each State agency, regional entity, or county, municipality or  
13 political subdivision thereof shall make available to the commission  
14 any studies, surveys, plans, data and other materials or information  
15 concerning the capital, land use, environmental, transportation,  
16 economic development and human services plans and programs of the  
17 agency, entity, county, municipality or political subdivision.  
18 (cf: P.L.1985, c.398, s.10)

19

20 70. Section 11 of P.L.1985, c.398 (C.52:18A-206) is amended to  
21 read as follows:

22 11. a. The provisions of P.L.1985, c.398 (C.52:18A-196 et al.)  
23 shall not be construed to affect the plans and regulations of the  
24 Pinelands Commission pursuant to the "Pinelands Protection Act,"  
25 P.L. 1979, c.111 (C.13:18A-1 et seq.) [or], the [Hackensack] New  
26 Jersey Meadowlands [Development] Commission pursuant to the  
27 "Hackensack Meadowlands Reclamation and Development Act,"  
28 P.L.1968, c.404 (C.13:17-1 et seq.), or the Highlands Water  
29 Protection and Planning Council pursuant to the "Highlands Water  
30 Protection and Planning Act," P.L. , c. (C. ) (now before the  
31 Legislature as this bill) for that portion of the Highlands Region lying  
32 within the preservation area as defined in section 3 of P.L. , c.  
33 (C. ) (now before the Legislature as this bill) . The State Planning  
34 Commission shall rely on the adopted plans and regulations of these  
35 entities in developing the State Development and Redevelopment Plan.

36 b. The State Planning Commission may adopt, after the enactment  
37 date of P.L.1993, c.190 (C.13:19-5.1 et al.), the coastal planning  
38 policies of the rules and regulations adopted pursuant to P.L.1973,  
39 c.185 (C.13:19-1 et seq.), the coastal planning policies of the rules and  
40 regulations adopted pursuant to subsection b. of section 17 of  
41 P.L.1973, c.185 (C.13:19-17) and any coastal planning policies of  
42 rules and regulations adopted pursuant to P.L.1973, c.185 (C.13:19-1  
43 et seq.) thereafter as the State Development and Redevelopment Plan  
44 for the coastal area as defined in section 4 of P.L.1973, c.185  
45 (C.13:19-4).

46 (cf: P.L.1993, c.190, s.19)

1 71. Section 13 of P.L.1981, c.262 (C.58:1A-13) is amended to  
2 read as follows:

3 13. a. The department shall prepare and adopt the New Jersey  
4 Statewide Water Supply Plan, which plan shall be revised and updated  
5 at least once every five years.

6 b. The plan shall include, but need not be limited to, the following:

7 (1) An identification of existing Statewide and regional ground and  
8 surface water supply sources, both interstate and intrastate, and the  
9 current usage thereof;

10 (2) Projections of Statewide and regional water supply demands  
11 for the duration of the plan;

12 (3) Recommendations for improvements to existing State water  
13 supply facilities, the construction of additional State water supply  
14 facilities, and for the interconnection or consolidation of existing water  
15 supply systems;

16 (4) Recommendations for the diversion or use of fresh surface or  
17 ground waters and saline surface or ground waters for aquaculture  
18 purposes;

19 (5) Recommendations for legislative and administrative actions to  
20 provide for the maintenance and protection of watershed areas; and

21 (6) Identification of lands purchased by the State for water supply  
22 facilities that currently are not actively used for water supply purposes,  
23 including, but not limited to, the Six Mile Run Reservoir Site, with  
24 recommendations as to the future use of these lands for water supply  
25 purposes within or outside of the planning horizon for the plan.

26 c. Prior to adopting the plan, including any revisions and updates  
27 thereto, the department shall:

28 (1) Prepare and make available to all interested persons a copy of  
29 the proposed plan or proposed revisions and updates to the current  
30 plan;

31 (2) Conduct public meetings in the several geographic areas of the  
32 State on the proposed plan or proposed revisions and updates to the  
33 current plan; and

34 (3) Consider the comments made at these meetings, make any  
35 revisions to the proposed plan or proposed revisions and updates to  
36 the current plan as it deems necessary, and adopt the plan.

37 d. Prior to the adoption of any revision to the New Jersey  
38 Statewide Water Supply Plan pursuant to this section, the department  
39 shall consult with the Highlands Water Protection and Planning  
40 Council concerning the possible effects and impact of the plan upon  
41 the Highlands regional master plan and the water and other natural  
42 resources of the Highlands Region.

43 (cf: P.L.2003, c.251, s.2)

44

45 72. Section 10 of P.L.1993, c.202 (C.58:1A-15.1) is amended to  
46 read as follows:

1 10. No action taken by the department pursuant to the provisions  
2 of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202  
3 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of the  
4 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.)  
5 ~~[or],~~ the comprehensive management plan for the pinelands area  
6 adopted pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8), the  
7 "Highlands Water Protection and Planning Act," P.L. , c. (C. )  
8 (now before the Legislature as this bill), or the Highlands regional  
9 master plan adopted pursuant to section 8 of P.L. , c. (C. ) (now  
10 before the Legislature as this bill).

11 (cf: P.L.1993, c.202, s.10)

12

13 73. Section 6 of P.L.1981, c.293 (C.58:1B-6) is amended to read  
14 as follows:

15 6. a. The authority is hereby empowered to design, initiate,  
16 acquire, construct, maintain, repair and operate projects or cause the  
17 same to be operated pursuant to a lease, sublease, or agreement with  
18 any person or governmental agency, and to issue bonds of the  
19 authority to finance these projects, payable from the revenues and  
20 other funds of the authority. All projects undertaken by the authority  
21 shall conform to the recommendations of the New Jersey Statewide  
22 Water Supply Plan.

23 b. The authority shall be subject to compliance with all State health  
24 and environmental protection statutes and regulations and any other  
25 statutes and regulations not inconsistent herewith. The authority may,  
26 upon the request of a governmental agency, enter into a contract to  
27 provide services for any project.

28 c. The authority shall consult with the Water Supply Advisory  
29 Council from time to time prior to final action on any project or  
30 undertaking authorized pursuant to this section.

31 d. The authority shall consult with the Highlands Water Protection  
32 and Planning Council, established pursuant to section 4 of P.L. ,  
33 c. (C. ) (now before the Legislature as this bill), from time to time  
34 prior to final action on any project or undertaking authorized pursuant  
35 to this section in the Highlands Region, as defined in section 3 of  
36 P.L. , c. (C. ) (now before the Legislature as this bill). The  
37 provisions of section 17 of P.L. , c. (C. ) (now before the  
38 Legislature as this bill) shall apply to the authority.

39 (cf: P.L.1981, c.293, s.6)

40

41 74. Section 7 of P.L.2000, c.175 (C.58:4B-7) is amended to read  
42 as follows:

43 7. The Lake Hopatcong Commission shall, in conjunction with  
44 each Lake Hopatcong municipality, develop a stormwater and  
45 nonpoint source pollution management plan for the region. The  
46 stormwater management and nonpoint source pollution plan shall be

1 designed to reduce siltation and prevent pollution caused by  
2 stormwater runoff or nonpoint sources that would otherwise degrade  
3 the water quality of Lake Hopatcong and its tributaries, interfere with  
4 water-based recreation, or adversely affect aquatic life. The goals and  
5 purposes of the plan shall be to improve the quality of stormwater  
6 runoff entering Lake Hopatcong, identify cost effective measures to  
7 control stormwater runoff and nonpoint source pollution, and identify  
8 funding mechanisms for implementation of such measures. The  
9 commission shall consult with the Highlands Water Protection and  
10 Planning Council, established pursuant to section 4 of P.L. , c.  
11 (C. ) (now before the Legislature as this bill), in developing the  
12 stormwater and nonpoint source pollution management plan pursuant  
13 to this section. Any plan developed pursuant to this section that may  
14 impact upon or otherwise affect the Highlands preservation area, as  
15 defined in section 3 of P.L. , c. (C. ) (now before the Legislature  
16 as this bill), shall be consistent with the Highlands regional master plan  
17 adopted by the council pursuant to section 8 of that act.  
18 (cf: P.L.2000, c.175, s.7)

19

20 75. Section 9 of P.L.2000, c.175 (C.58:4B-9) is amended to read  
21 as follows:

22 9. Each municipality represented on the commission shall provide  
23 the commission notice of proposed amendments and revisions to  
24 municipal master plans, zoning and other ordinances governing land  
25 use and development, and applications for specific development  
26 projects, and request that the commission review and evaluate the  
27 proposed amendment, revision, or application to assess its potential  
28 impact upon Lake Hopatcong and its watershed and provide the  
29 commission's recommendations for appropriate action thereon. As  
30 part of the commission's review and evaluation, the commission shall  
31 consider the consistency of the amendment or revision with the  
32 Highlands regional master plan if it may impact upon or otherwise  
33 affect the Highlands preservation area, as defined in section 3 of  
34 P.L. , c. (C. ) (now before the Legislature as this bill), and shall  
35 consult with the Highlands Water Protection and Planning Council,  
36 established pursuant to section 4 of P.L. , c. (C. ) (now before  
37 the Legislature as this bill), on any such matter.

38 (cf: P.L.2000, c.175, s.9)

39

40 76. R.S.58:5-12 is amended to read as follows:

41 58:5-12. The district water supply commission shall thereupon  
42 proceed to formulate plans for obtaining a water supply or a new or  
43 additional water supply for [such] the municipality and any other  
44 municipalities that may desire water from such joint water supply, as  
45 provided for herein, and to estimate the cost thereof, the annual cost  
46 of operating the same, the probable share of the cost which each of

1 the municipalities will be called upon to pay for its share of water  
2 supply and plant used in common with the other municipalities, and the  
3 cost of any distribution system, water supply or plant acquired or  
4 constructed for its individual use, and shall report [said] the plans to  
5 the municipalities, together with a form of contract, providing for the  
6 raising and payment of the necessary funds to meet the cost of  
7 acquisition and operation.

8 If the plans to be formulated pursuant to this section involve  
9 obtaining water from the Highlands Region, as defined in section 3 of  
10 P.L. , c. (C. ) (now before the Legislature as this bill), the  
11 district water supply commission shall consult with the Highlands  
12 Water Protection and Planning Council established pursuant to section  
13 4 of P.L. , c. (C. ) (now before the Legislature as this bill) prior  
14 to moving forward with any such plans or entering into any such  
15 contracts. The provisions of section 17 of P.L. , c. (C. ) (now  
16 before the Legislature as this bill) shall apply to the district water  
17 supply commission.

18 (cf: R.S.58:5-12)

19

20 77. Section 1 of P.L.1993, c.351 (C.58:10A-7.2) is amended to  
21 read as follows:

22 1. a. An application for a permit issued by the Department of  
23 Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et  
24 seq.) for the discharge of groundwater to surface water involving a  
25 groundwater remedial action necessitated by a discharge from an  
26 underground storage tank containing petroleum products or a  
27 groundwater remedial action involving petroleum products, shall  
28 contain, in addition to a properly filled application form:

29 (1) such documentation or other information on the permit  
30 application as may be prescribed by the department on a checklist  
31 made available to a prospective applicant;

32 (2) if the discharge from the proposed groundwater remedial action  
33 is located within a wastewater service district or area of a local public  
34 entity, a certified statement that a request, dated at least 60 days prior  
35 to the filing of the permit application, had been made to the local  
36 public entity to discharge the groundwater into the wastewater  
37 collection or treatment facilities of that entity, and that no reply has  
38 been received from that entity, or a written statement by the local  
39 public entity, dated not more than 60 days prior to the filing of the  
40 permit application with the department, that the entity has approved  
41 or rejected a written request by the applicant to discharge the treated  
42 groundwater into the wastewater collection or treatment facilities of  
43 that entity. Notwithstanding that a local public entity has approved  
44 the request to discharge groundwater into its facilities, the department  
45 may approve the applicant's permit to discharge the groundwater to  
46 surface water upon a finding that it is in the public interest;

1 (3) a certified statement that a copy of the completed application  
2 form along with a consent request, as prescribed in subsection b. of  
3 this section, have been filed with the clerk of the municipality in which  
4 the site of the proposed groundwater remedial action is located, and  
5 setting forth the date of the filing with the host municipality, which  
6 filing shall be made prior to, or concurrent with, the filing of the  
7 application with the department; [and]

8 (4) within the pinelands area, documentation from the Pinelands  
9 Commission that the application is consistent with the requirements of  
10 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.)  
11 or any regulations promulgated pursuant thereto and section 502 of  
12 the "National Parks and Recreation Act of 1978" (Pub.L. 95-625); and

13 (5) within the Highlands preservation area, documentation from the  
14 Highlands Water Protection and Planning Council that the application  
15 is consistent with the requirements of the "Highlands Water Protection  
16 and Planning Act," P.L. , c. (C. ) (now before the Legislature as  
17 this bill), and any rules and regulations and the Highlands regional  
18 master plan adopted pursuant thereto.

19 b. The department shall prescribe the form and content of a request  
20 for consent filed with a municipality pursuant to paragraph (3) of  
21 subsection a. of this section. The municipal consent request shall be  
22 limited to an identification of all municipal approvals with which the  
23 applicant is required to comply, the status of any applications filed  
24 therefor, and whether or not the municipality consents to the  
25 application and the specific reasons therefor. The request for consent  
26 form shall also advise that documentation and other information  
27 relating to the application have been filed and are available for review  
28 at the department. A municipality receiving a request for consent form  
29 shall have 30 days from the date of receipt of a copy of the application  
30 and request for consent form to file with the department the  
31 information requested, and its consent of, or objections to, the  
32 application. Municipal consent or objection to a groundwater remedial  
33 action shall be by resolution of the governing body of the municipality  
34 unless the governing body has, by resolution, delegated such authority  
35 to a qualified officer or entity thereof, in which case the endorsement  
36 shall be signed by the designated officer or official of the entity.  
37 Notwithstanding that a municipality objects to a permit application or  
38 fails to file a consent or objection to the permit application, the  
39 department may approve the applicant's permit application to  
40 discharge groundwater to surface water.

41 c. An application pursuant to subsection a. of this section shall be  
42 deemed complete, for the purposes of departmental review, within 30  
43 days of the filing of the application with the department unless the  
44 department notifies the applicant, in writing, prior to expiration of the  
45 30 days that the application has failed to satisfy one or more of the  
46 items identified in subsection a. of this section. If an application is

1 determined to be complete, the department shall review and take final  
2 action on the completed application within 60 days from  
3 commencement of the review, or, if the parties mutually agree to a  
4 30-day extension, within 90 days therefrom. The review period for a  
5 completed application shall commence immediately upon termination  
6 of the 30-day period, or upon determination by the department that the  
7 application is complete, whichever occurs first. If the department fails  
8 to take final action on a permit application for a general permit in the  
9 time frames set forth in this subsection, that general permit shall be  
10 deemed to have been approved by the department. The department  
11 shall review an application for a permit pursuant to subsection a. of  
12 this section and shall take action on that application pursuant to the  
13 time frames set forth in this subsection, notwithstanding that all of the  
14 municipal approvals have not been obtained, unless such approvals  
15 would materially affect the terms and conditions of the permit, except  
16 that in such instances the department may condition its approval of the  
17 application on the necessary municipal approvals being subject to the  
18 terms and conditions of the application.

19 d. The department may issue a general permit for the discharge of  
20 groundwater to surface water pursuant to a groundwater remedial  
21 action of discharged petroleum products as provided in subsection a.  
22 of this section.

23 e. (1) The department may not require a municipal consent of a  
24 treatment works application for a groundwater remedial action for  
25 which a permit application is submitted pursuant to subsection a. of  
26 this section.

27 (2) If a completed application for a treatment works approval for  
28 a groundwater remedial action is filed with the department at the same  
29 time as an application for a general permit therefor, the department  
30 shall concurrently review the two applications, except that the review  
31 of the application for the treatment works approval for a groundwater  
32 remedial action shall not be subject to the time frames set forth in  
33 subsection c. of this section.

34 f. The provisions of this section shall apply to applications filed on  
35 or after the effective date of this act, except that the Department of  
36 Environmental Protection may implement any of the provisions of this  
37 section prior to that date.

38 g. The department may, in accordance with the "Administrative  
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
40 regulations to implement the provisions of this act.

41 h. For purposes of this section:

42 "General permit" means a permit issued by the department for  
43 similar discharges.

44 "Groundwater remedial action" means the removal or abatement of  
45 one or more pollutants in a groundwater source.

46 "Local public entity" means a sewerage authority established

1 pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), a municipal  
2 authority established pursuant to P.L.1957, c.183 (C.40:14B-1 et  
3 seq.), the Passaic Valley Sewerage Commissioners continued pursuant  
4 to R.S.58:14-2, a joint meeting established pursuant to R.S.40:63-68  
5 et seq. or a local unit authorized to operate a sewerage facility  
6 pursuant to N.J.S.40A:26A-1 et seq., or any predecessor act.

7 "Underground storage tank" shall have the same meaning as in  
8 section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used  
9 herein underground storage tanks shall include:

10 (1) farm underground storage tanks of 1,100 gallons or less  
11 capacity used for storing motor fuel for noncommercial purposes;

12 (2) underground storage tanks used to store heating oil for on-site  
13 consumption in a nonresidential building with a capacity of 2,000  
14 gallons or less; and

15 (3) underground storage tanks used to store heating oil for on-site  
16 consumption in a residential building.

17 (cf: P.L.1993, c.351, s.1)

18  
19 78. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to  
20 read as follows:

21 24. a. The department shall, pursuant to the "Administrative  
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
23 regulations establishing criteria and minimum standards necessary for  
24 the submission, evaluation and approval of plans or results of  
25 preliminary assessments, site investigations, remedial investigations,  
26 and remedial action workplans and for the implementation thereof.  
27 The documents for the preliminary assessment, site investigation,  
28 remedial investigation, and remedial action workplan required to be  
29 submitted for a remediation, shall not be identical to the criteria and  
30 standards used for similar documents submitted pursuant to federal  
31 law, except as may be required by federal law. In establishing criteria  
32 and minimum standards for these terms the department shall strive to  
33 be result oriented, provide for flexibility, and to avoid duplicate or  
34 unnecessarily costly or time consuming conditions or standards.

35 b. The regulations adopted by the department pursuant to  
36 subsection a. of this section shall provide that a person performing a  
37 remediation may deviate from the strict adherence to the regulations,  
38 in a variance procedure or by another method prescribed by the  
39 department, if that person can demonstrate that the deviation and the  
40 resulting remediation would be as protective of human health, safety,  
41 and the environment, as appropriate, as the department's regulations  
42 and that the health risk standards established in subsection d. of  
43 section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable  
44 environmental standards would be met. Factors to be considered in  
45 determining if the deviation should be allowed are whether the  
46 alternative method:

1 (1) has been either used successfully or approved by the  
2 department in writing or similar situations;

3 (2) reflects current technology as documented in peer-reviewed  
4 professional journals;

5 (3) can be expected to achieve the same or substantially the same  
6 results or objectives as the method which it is to replace; and

7 (4) furthers the attainment of the goals of the specific remedial  
8 phase for which it is used.

9 The department shall make available to the public, and shall  
10 periodically update, a list of alternative remediation methods used  
11 successfully or approved by the department as provided in paragraph  
12 (1) of this subsection.

13 c. To the extent practicable and in conformance with the standards  
14 for remediations as provided in section 35 of P.L.1993, c.139  
15 (C.58:10-12), the department shall adopt rules and regulations that  
16 allow for certain remedial actions to be undertaken in a manner  
17 prescribed by the department without having to obtain prior approval  
18 from or submit detailed documentation to the department. A person  
19 who performs a remedial action in the manner prescribed in the rules  
20 and regulations of the department, and who certifies this fact to the  
21 department, shall obtain a no further action letter from the department  
22 for that particular remedial action.

23 d. The department shall develop regulatory procedures that  
24 encourage the use of innovative technologies in the performance of  
25 remedial actions and other remediation activities.

26 e. Notwithstanding any other provisions of this section, all  
27 remediation standards and remedial actions that involve real property  
28 located in the pinelands area shall be consistent with the provisions of  
29 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
30 any rules and regulations adopted pursuant thereto, and with section  
31 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C.  
32 s.471i.

33 f. Notwithstanding any other provisions of this section, all  
34 remediation standards and remedial actions that involve real property  
35 located in the Highlands preservation area shall be consistent with the  
36 provisions of the "Highlands Water Protection and Planning Act,"  
37 P.L. , c. (C. ) (now before the Legislature as this bill), and any  
38 rules and regulations and the Highlands regional master plan adopted  
39 pursuant thereto.

40 (cf: P.L.1997, c.278, s.10)

41

42 79. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to  
43 read as follows:

44 35. a. The Department of Environmental Protection shall adopt  
45 minimum remediation standards for soil, groundwater, and surface  
46 water quality necessary for the remediation of contamination of real

1 property. The remediation standards shall be developed to ensure that  
2 the potential for harm to public health and safety and to the  
3 environment is minimized to acceptable levels, taking into  
4 consideration the location, the surroundings, the intended use of the  
5 property, the potential exposure to the discharge, and the surrounding  
6 ambient conditions, whether naturally occurring or man-made.

7 Until the minimum remediation standards for the protection of  
8 public health and safety as described herein are adopted, the  
9 department shall apply public health and safety remediation standards  
10 for contamination at a site on a case-by-case basis based upon the  
11 considerations and criteria enumerated in this section.

12 The department shall not propose or adopt remediation standards  
13 protective of the environment pursuant to this section, except  
14 standards for groundwater or surface water, until recommendations  
15 are made by the Environment Advisory Task Force created pursuant  
16 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
17 Task Force issues its recommendations and the department adopts  
18 remediation standards protective of the environment as required by  
19 this section, the department shall continue to determine the need for  
20 and the application of remediation standards protective of the  
21 environment on a case-by-case basis in accordance with the guidance  
22 and regulations of the United States Environmental Protection Agency  
23 pursuant to the "Comprehensive Environmental Response,  
24 Compensation and Liability Act of 1980," 42 U.S.C. s.9601 et seq.  
25 and other statutory authorities as applicable.

26 The department may not require any person to perform an  
27 ecological evaluation of any area of concern that consists of an  
28 underground storage tank storing heating oil for on-site consumption  
29 in a one to four family residential building.

30 b. In developing minimum remediation standards the department  
31 shall:

32 (1) base the standards on generally accepted and peer reviewed  
33 scientific evidence or methodologies;

34 (2) base the standards upon reasonable assumptions of exposure  
35 scenarios as to amounts of contaminants to which humans or other  
36 receptors will be exposed, when and where those exposures will occur,  
37 and the amount of that exposure;

38 (3) avoid the use of redundant conservative assumptions. The  
39 department shall avoid the use of redundant conservative assumptions  
40 by the use of parameters that provide an adequate margin of safety and  
41 which avoid the use of unrealistic conservative exposure parameters  
42 and which guidelines make use of the guidance and regulations for  
43 exposure assessment developed by the United States Environmental  
44 Protection Agency pursuant to the "Comprehensive Environmental  
45 Response, Compensation, and Liability Act of 1980," 42 U.S.C.  
46 s.9601 et seq. and other statutory authorities as applicable;

1 (4) where feasible, establish the remediation standards as numeric  
2 or narrative standards setting forth acceptable levels or concentrations  
3 for particular contaminants; and

4 (5) consider and utilize, in the absence of other standards used or  
5 developed by the Department of Environmental Protection and the  
6 United States Environmental Protection Agency, the toxicity factors,  
7 slope factors for carcinogens and reference doses for non-carcinogens  
8 from the United States Environmental Protection Agency's Integrated  
9 Risk Information System (IRIS).

10 c. (1) The department shall develop residential and nonresidential  
11 soil remediation standards that are protective of public health and  
12 safety. For contaminants that are mobile and transportable to  
13 groundwater or surface water, the residential and nonresidential soil  
14 remediation standards shall be protective of groundwater and surface  
15 water. Residential soil remediation standards shall be set at levels or  
16 concentrations of contamination for real property based upon the use  
17 of that property for residential or similar uses and which will allow the  
18 unrestricted use of that property without the need of engineering  
19 devices or any institutional controls and without exceeding a health  
20 risk standard greater than that provided in subsection d. of this  
21 section. Nonresidential soil remediation standards shall be set at levels  
22 or concentrations of contaminants that recognize the lower likelihood  
23 of exposure to contamination on property that will not be used for  
24 residential or similar uses, which will allow for the unrestricted use of  
25 that property for nonresidential purposes, and that can be met without  
26 the need of engineering controls. Whenever real property is  
27 remediated to a nonresidential soil remediation standard, except as  
28 otherwise provided in paragraph (3) of subsection g. of this section,  
29 the department shall require, pursuant to section 36 of P.L.1993, c.139  
30 (C.58:10B-13), that the use of the property be restricted to  
31 nonresidential or other uses compatible with the extent of the  
32 contamination of the soil and that access to that site be restricted in a  
33 manner compatible with the allowable use of that property.

34 (2) The department may develop differential remediation standards  
35 for surface water or groundwater that take into account the current,  
36 planned, or potential use of that water in accordance with the "Clean  
37 Water Act" (33 U.S.C. s.1251 et seq.) and the "Water Pollution  
38 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

39 d. The department shall develop minimum remediation standards  
40 for soil, groundwater, and surface water intended to be protective of  
41 public health and safety taking into account the provisions of this  
42 section. In developing these minimum health risk remediation  
43 standards the department shall identify the hazards posed by a  
44 contaminant to determine whether exposure to that contaminant can  
45 cause an increase in the incidence of an adverse health effect and  
46 whether the adverse health effect may occur in humans. The

1 department shall set minimum soil remediation health risk standards  
2 for both residential and nonresidential uses that:

3 (1) for human carcinogens, as categorized by the United States  
4 Environmental Protection Agency, will result in an additional cancer  
5 risk of one in one million;

6 (2) for noncarcinogens, will limit the Hazard Index for any given  
7 effect to a value not exceeding one.

8 The health risk standards established in this subsection are for any  
9 particular contaminant and not for the cumulative effects of more than  
10 one contaminant at a site.

11 e. Remediation standards and other remediation requirements  
12 established pursuant to this section and regulations adopted pursuant  
13 thereto shall apply to remediation activities required pursuant to the  
14 "Spill Compensation and Control Act," P.L.1976, c.141  
15 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977,  
16 c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the  
17 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the  
18 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.),  
19 the "Comprehensive Regulated Medical Waste Management Act,"  
20 P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste  
21 Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the  
22 "Sanitary Landfill Facility Closure and Contingency Fund Act,"  
23 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level  
24 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333  
25 (C.13:1E-177 et seq.), or any other law or regulation by which the  
26 State may compel a person to perform remediation activities on  
27 contaminated property. However, nothing in this subsection shall be  
28 construed to limit the authority of the department to establish  
29 discharge limits for pollutants or to prescribe penalties for violations  
30 of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to  
31 require the complete removal of nonhazardous solid waste pursuant to  
32 law.

33 f. (1) A person performing a remediation of contaminated real  
34 property, in lieu of using the established minimum soil remediation  
35 standard for either residential use or nonresidential use adopted by the  
36 department pursuant to subsection c. of this section, may submit to the  
37 department a request to use an alternative residential use or  
38 nonresidential use soil remediation standard. The use of an alternative  
39 soil remediation standard shall be based upon site specific factors  
40 which may include (1) physical site characteristics which may vary  
41 from those used by the department in the development of the soil  
42 remediation standards adopted pursuant to this section; or (2) a site  
43 specific risk assessment. If a person performing a remediation  
44 requests to use an alternative soil remediation standard based upon a  
45 site specific risk assessment, that person shall demonstrate to the  
46 department that the requested deviation from the risk assessment

1 protocol used by the department in the development of soil  
2 remediation standards pursuant to this section is consistent with the  
3 guidance and regulations for exposure assessment developed by the  
4 United States Environmental Protection Agency pursuant to the  
5 "Comprehensive Environmental Response, Compensation, and  
6 Liability Act of 1980," 42 U.S.C. 9601 et seq. and other statutory  
7 authorities as applicable. A site specific risk assessment may consider  
8 exposure scenarios and assumptions that take into account the form of  
9 the contaminant present, natural biodegradation, fate and transport of  
10 the contaminant, available toxicological data that are based upon  
11 generally accepted and peer reviewed scientific evidence or  
12 methodologies , and physical characteristics of the site, including, but  
13 not limited to, climatic conditions and topographic conditions.  
14 Nothing in this subsection shall be construed to authorize the use of  
15 an alternative soil remediation standard in those instances where an  
16 engineering control is the appropriate remedial action, as determined  
17 by the department, to prevent exposure to contamination.

18 Upon a determination by the department that the requested  
19 alternative remediation standard satisfies the department's regulations,  
20 is protective of public health and safety, as established in subsection  
21 d. of this section, and is protective of the environment pursuant to  
22 subsection a. of this section, the alternative residential use or  
23 nonresidential use soil remediation standard shall be approved by the  
24 department. The burden to demonstrate that the requested alternative  
25 remediation standard is protective rests with the person requesting the  
26 alternative standard and the department may require the submission of  
27 any documentation as the department determines to be necessary in  
28 order for the person to meet that burden.

29 (2) The department may, upon its own initiative, require an  
30 alternative remediation standard for a particular contaminant for a  
31 specific real property site, in lieu of using the established minimum  
32 residential use or nonresidential use soil remediation standard adopted  
33 by the department for a particular contaminant pursuant to this  
34 section. The department may require an alternative remediation  
35 standard pursuant to this paragraph upon a determination by the  
36 department, based on the weight of the scientific evidence, that due to  
37 specific physical site characteristics of the subject real property,  
38 including, but not limited to, its proximity to surface water, the use of  
39 the adopted residential use or nonresidential use soil remediation  
40 standards would not be protective , or would be unnecessarily  
41 overprotective, of public health or safety or of the environment, as  
42 appropriate.

43 g. The development, selection, and implementation of any  
44 remediation standard or remedial action shall ensure that it is  
45 protective of public health, safety, and the environment, as applicable,  
46 as provided in this section. In determining the appropriate remediation

1 standard or remedial action that shall occur at a site, the department  
2 and any person performing the remediation, shall base the decision on  
3 the following factors:

4 (1) Unrestricted use remedial actions, limited restricted use  
5 remedial actions and restricted use remedial actions shall be allowed  
6 except that unrestricted use remedial actions and limited restricted use  
7 remedial actions shall be preferred over restricted use remedial actions.  
8 The department, however, may not disapprove the use of a restricted  
9 use remedial action or a limited restricted use remedial action so long  
10 as the selected remedial action meets the health risk standard  
11 established in subsection d. of this section, and where, as applicable,  
12 is protective of the environment. The choice of the remedial action to  
13 be implemented shall be made by the person performing the  
14 remediation in accordance with regulations adopted by the department  
15 and that choice of the remedial action shall be approved by the  
16 department if all the criteria for remedial action selection enumerated  
17 in this section , as applicable, are met. The department may not  
18 require a person to compare or investigate any alternative remedial  
19 action as part of its review of the selected remedial action;

20 (2) Contamination may, upon the department's approval, be left  
21 onsite at levels or concentrations that exceed the minimum soil  
22 remediation standards for residential use if the implementation of  
23 institutional or engineering controls at that site will result in the  
24 protection of public health, safety and the environment at the health  
25 risk standard established in subsection d. of this section and if the  
26 requirements established in subsections a., b., c. and d. of section 36  
27 of P.L.1993, c.139 (C.58:10B-13) are met;

28 (3) Real property on which there is soil that has not been  
29 remediated to the residential soil remediation standards, or real  
30 property on which the soil, groundwater, or surface water has been  
31 remediated to meet the required health risk standard by the use of  
32 engineering or institutional controls, may be developed or used for  
33 residential purposes, or for any other similar purpose, if (a) all areas  
34 of that real property at which a person may come into contact with soil  
35 are remediated to meet the residential soil remediation standards and  
36 (b) it is clearly demonstrated that for all areas of the real property,  
37 other than those described in subparagraph (a) above, engineering and  
38 institutional controls can be implemented and maintained on the real  
39 property sufficient to meet the health risk standard as established in  
40 subsection d. of this section;

41 (4) Remediation shall not be required beyond the regional natural  
42 background levels for any particular contaminant. The department  
43 shall develop regulations that set forth a process to identify  
44 background levels of contaminants for a particular region. For the  
45 purpose of this paragraph "regional natural background levels" means  
46 the concentration of a contaminant consistently present in the

1 environment of the region of the site and which has not been  
2 influenced by localized human activities;

3 (5) Remediation shall not be required of the owner or operator of  
4 real property for contamination coming onto the site from another  
5 property owned and operated by another person, unless the owner or  
6 operator is the person who is liable for cleanup and removal costs  
7 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.);

8 (6) Groundwater that is contaminated shall not be required to be  
9 remediated to a level or concentration for any particular contaminant  
10 lower than the level or concentration that is migrating onto the  
11 property from another property owned and operated by another  
12 person;

13 (7) The technical performance, effectiveness and reliability of the  
14 proposed remedial action in attaining and maintaining compliance with  
15 applicable remediation standards and required health risk standards  
16 shall be considered. In reviewing a proposed remedial action, the  
17 department shall also consider the ability of the owner or operator to  
18 implement the proposed remedial action within a reasonable time  
19 frame without jeopardizing public health, safety or the environment;

20 (8) The use of a remedial action for soil contamination that is  
21 determined by the department to be effective in its guidance document  
22 created pursuant to section 38 of P.L.1993, c.139 (C.58:10B-14), is  
23 presumed to be an appropriate remedial action if it is to be  
24 implemented on a site in the manner described by the department in the  
25 guidance document and applicable regulations and if all of the  
26 conditions for remedy selection provided for in this section are met.  
27 The burden to prove compliance with the criteria in the guidance  
28 document is with the person performing the remediation;

29 (9) (Deleted by amendment, P.L.1997, c.278).

30 The burden to demonstrate that a remedial action is protective of  
31 public health, safety and the environment, as applicable, and has been  
32 selected in conformance with the provisions of this subsection is with  
33 the person proposing the remedial action.

34 The department may require the person performing the remediation  
35 to supply the information required pursuant to this subsection as is  
36 necessary for the department to make a determination.

37 h. (1) The department shall adopt regulations which establish a  
38 procedure for a person to demonstrate that a particular parcel of land  
39 contains large quantities of historical fill material. Upon a  
40 determination by the department that large quantities of historic fill  
41 material exist on that parcel of land, there is a rebuttable presumption  
42 that the department shall not require any person to remove or treat the  
43 fill material in order to comply with applicable health risk or  
44 environmental standards. In these areas the department shall establish  
45 by regulation the requirement for engineering or institutional controls  
46 that are designed to prevent exposure of these contaminants to

1 humans, that allow for the continued use of the property, that are less  
2 costly than removal or treatment, which maintain the health risk  
3 standards as established in subsection d. of this section, and, as  
4 applicable, are protective of the environment. The department may  
5 rebut the presumption only upon a finding by the preponderance of the  
6 evidence that the use of engineering or institutional controls would not  
7 be effective in protecting public health, safety, and the environment.  
8 The department may not adopt any rule or regulation that has the  
9 effect of shifting the burden of rebutting the presumption. For the  
10 purposes of this paragraph "historic fill material" means generally large  
11 volumes of non-indigenous material, no matter what date they were  
12 emplaced on the site, used to raise the topographic elevation of a site,  
13 which were contaminated prior to emplacement and are in no way  
14 connected with the operations at the location of emplacement and  
15 which include, but are not limited to, construction debris, dredge  
16 spoils, incinerator residue, demolition debris, fly ash, and  
17 non-hazardous solid waste. Historic fill material shall not include any  
18 material which is substantially chromate chemical production waste or  
19 any other chemical production waste or waste from processing of  
20 metal or mineral ores, residues, slags or tailings.

21 (2) The department shall develop recommendations for remedial  
22 actions in large areas of historic industrial contamination. These  
23 recommendations shall be designed to meet the health risk standards  
24 established in subsection d. of this section, and to be protective of the  
25 environment and shall take into account the industrial history of these  
26 sites, the extent of the contamination that may exist, the costs of  
27 remedial actions, the economic impacts of these policies, and the  
28 anticipated uses of these properties. The department shall issue a  
29 report to the Senate Environment Committee and to the Assembly  
30 Agriculture and Waste Management Committee, or their successors,  
31 explaining these recommendations and making any recommendations  
32 for legislative or regulatory action.

33 (3) The department may not, as a condition of allowing the use of  
34 a nonresidential use soil remediation standard, or the use of  
35 institutional or engineering controls, require the owner of that real  
36 property, except as provided in section 36 of P.L.1993, c.139  
37 (C.58:10B-13), to restrict the use of that property through the filing  
38 of a deed easement, covenant, or condition.

39 i. The department may not require a remedial action workplan to  
40 be prepared or implemented or engineering or institutional controls to  
41 be imposed upon any real property unless sampling performed at that  
42 real property demonstrates the existence of contamination above the  
43 applicable remediation standards.

44 j. Upon the approval by the department of a remedial action  
45 workplan, or similar plan that describes the extent of contamination at  
46 a site and the remedial action to be implemented to address that

1 contamination, the department may not subsequently require a change  
2 to that workplan or similar plan in order to compel a different  
3 remediation standard due to the fact that the established remediation  
4 standards have changed; however, the department may compel a  
5 different remediation standard if the difference between the new  
6 remediation standard and the remediation standard approved in the  
7 workplan or other plan differs by an order of magnitude. The  
8 limitation to the department's authority to change a workplan or  
9 similar plan pursuant to this subsection shall only apply if the workplan  
10 or similar plan is being implemented in a reasonable timeframe, as may  
11 be indicated in the approved remedial action workplan or similar plan.

12 k. Notwithstanding any other provisions of this section, all  
13 remediation standards and remedial actions that involve real property  
14 located in the Pinelands area shall be consistent with the provisions of  
15 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
16 any rules and regulations promulgated pursuant thereto, and with  
17 section 502 of the "National Parks and Recreation Act of 1978," 16  
18 U.S.C. s.471i; and all remediation standards and remedial actions that  
19 involve real property located in the Highlands preservation area shall  
20 be consistent with the provisions of the "Highlands Water Protection  
21 and Planning Act," P.L. , c. (C. ) (now before the Legislature as  
22 this bill), and any rules and regulations and the Highland regional  
23 master plan adopted pursuant thereto.

24 l. Upon the adoption of a remediation standard for a particular  
25 contaminant in soil, groundwater, or surface water pursuant to this  
26 section, the department may amend that remediation standard only  
27 upon a finding that a new standard is necessary to maintain the health  
28 risk standards established in subsection d. of section 35 of P.L.1993,  
29 c.139 (C.58:10B-12) or to protect the environment, as applicable. The  
30 department may not amend a public health based soil remediation  
31 standard to a level that would result in a health risk standard more  
32 protective than that provided for in subsection d. of section 35 of  
33 P.L.1993, c.139 (C.58:10B-12).

34 m. Nothing in P.L.1993, c.139 shall be construed to restrict or in  
35 any way diminish the public participation which is otherwise provided  
36 under the provisions of the "Spill Compensation and Control Act,"  
37 P.L.1976, c.141 (C.58:10-23.11 et seq.).

38 n. Notwithstanding any provision of subsection a. of section 36 of  
39 P.L.1993, c.139 (C.58:10B-13) to the contrary, the department may  
40 not require a person intending to implement a remedial action at an  
41 underground storage tank facility storing heating oil for on-site  
42 consumption at a one to four family residential dwelling to provide  
43 advance notice to a municipality prior to implementing that remedial  
44 action.

45 o. A person who has remediated a site pursuant to the provisions  
46 of this section, who was liable for the cleanup and removal costs of

1 that discharge pursuant to the provisions of paragraph (1) of  
2 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and  
3 who remains liable for the discharge on that site due to a possibility  
4 that a remediation standard may change, undiscovered contamination  
5 may be found, or because an engineering control was used to  
6 remediate the discharge, shall maintain with the department a current  
7 address at which that person may be contacted in the event additional  
8 remediation needs to be performed at the site. The requirement to  
9 maintain the current address shall be made part of the conditions of the  
10 no further action letter issued by the department.

11 (cf: P.L.1997, c.278, s.17)

12

13 80. Section 1 of P.L.1999, c.225 (C.58:29-8) is amended to read  
14 as follows:

15 1. a. There shall be appropriated each State fiscal year from the  
16 General Fund to each municipality within which any lands subject to  
17 the moratorium on the conveyance of watershed lands imposed  
18 pursuant to section 1 of P.L.1988, c.163, as amended by section 1 of  
19 P.L.1990, c.19, or subject to the prohibition on the sale or conveyance  
20 of certain public water supply lands prescribed pursuant to section 27  
21 of P.L. , c. (C. ) (now before the Legislature as this bill), are  
22 located an amount of ~~[\$68.50]~~ \$35 per acre of such lands located  
23 within the municipality. Notwithstanding the provisions of this section  
24 to the contrary, the per acre amount of watershed moratorium or  
25 water supply protection offset aid prescribed by this section shall be  
26 adjusted annually in direct proportion to the increase or decrease in the  
27 Consumer Price Index for all urban consumers in the New York City  
28 area as reported by the United States Department of Labor. The  
29 adjustment shall become effective on July 1 of the year in which the  
30 adjustment is made.

31 b. Notwithstanding the provisions of subsection a. of this section  
32 to the contrary, payments shall no longer be made pursuant thereto on  
33 the basis of the location within a municipality of lands subject to the  
34 moratorium on the conveyance of watershed lands imposed pursuant  
35 to section 1 of P.L.1988, c.163, as amended by section 1 of P.L.1990,  
36 c.19, if (1) those sections are repealed by law, or (2) the watershed  
37 land conveyance moratorium imposed pursuant to those sections is  
38 terminated by a final, unappealed order of a court of competent  
39 jurisdiction, whichever is sooner.

40 (cf: P.L.1999, c.225, s.1)

41

42 81. Section 3 of P.L.1999, c.225 is amended to read as follows:

43 3. This act shall take effect July 1, 1999 [and shall expire (1) on  
44 the repeal by law of section 1 of P.L.1988, c.163 and section 1 of  
45 P.L.1990, c.19, or (2) upon termination of the watershed land  
46 conveyance moratorium imposed pursuant to section 1 of P.L.1988,

1 c.163 and section 1 of P.L.1990, c.19, by a final, unappealed order of  
2 a court of competent jurisdiction, whichever is sooner].  
3 (cf: P.L.1999, c.225, s.3)

4

5 82. This act shall take effect immediately.

6

7

8

## STATEMENT

9

10

### I

11

12 This bill would establish a comprehensive approach to the  
13 protection and preservation of the drinking water and natural  
14 resources of the New Jersey Highlands Region, which is the source of  
15 the drinking water of over half of the residents of New Jersey.

16 The approach set forth in this bill consists essentially of four major  
17 components. First, the bill defines the New Jersey Highlands Region  
18 and divides it into a preservation area, in which development would  
19 be strictly regulated, and a planning area. Secondly, the bill establishes  
20 the Highlands Water Protection and Planning Council, which would be  
21 charged with preparing and implementing a regional master plan for  
22 the Highlands Region, with which municipalities and counties in the  
23 preservation area would be required to conform their master plans.  
24 Thirdly, the bill would require, upon the date of enactment, that any  
25 major development in the preservation area receive from the  
26 Department of Environmental Protection (DEP) a Highlands  
27 Preservation Area approval, which would consist of the related aspects  
28 of existing environmental land use and water permits as well as  
29 additional, statutorily prescribed environmentally protective land use  
30 and water protection requirements. This system would be in effect for  
31 nine months. Lastly, the bill would require the DEP to adopt, within  
32 nine months, immediately effective rules and regulations establishing  
33 a permanent Highlands permitting review program, incorporating the  
34 provisions of the Highlands Preservation Area approval program, and  
35 setting strict standards for reviewing major development in the  
36 preservation area.

37 The bill also contains land owner equity provisions and a provision  
38 to provide State aid to offset decreases in property tax revenues in  
39 municipalities with land located in the preservation area, and  
40 authorizes the Highlands Water Protection and Planning Council to  
41 establish and implement a transfer of development rights program. In  
42 addition, this bill prohibits any State or local public entity or public  
43 utility from selling any water supply protection lands in the Highlands  
44 Region, with certain exceptions.

1

II

2

3       The New Jersey Highlands Region consists of about 800,000 acres,  
4 or about 1,250 square miles, of forests and hills stretching from  
5 Ringwood in the northeast to Phillipsburg in the southwest, across  
6 portions of Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex,  
7 and Warren counties and 90 municipalities, and offers unparalleled  
8 opportunities for hiking, bird watching, fishing, and other naturalist  
9 and recreational activities.

10       The Highlands Region is the location of a majority of the State's  
11 reservoirs, and its surface and ground water resources together  
12 provide drinking water for over half of the residents in New Jersey,  
13 many of whom do not live in the Highlands. The Highlands Region,  
14 because of its proximity to rapidly expanding suburban areas, is at  
15 serious risk of being fragmented and consumed by hop-scotch  
16 suburban development, with more than 3,000 acres per year being lost  
17 to development. The existing land use and environmental regulation  
18 system has shown itself to be unable to protect the water and natural  
19 resources of the Highlands Region against the environmental impacts  
20 of sprawl development. The comprehensive approach set forth in this  
21 bill would set the stage for the long-term protection of the potable  
22 water supplies of the Highlands Region.

23

24

III

25

26       For the purposes of this bill the Highlands Region is defined as all  
27 the area within the 90 municipalities in Bergen, Hunterdon, Morris,  
28 Passaic, Somerset, Sussex, and Warren counties enumerated in section  
29 7 of the bill. The preservation area of the Highlands Region, in which  
30 municipalities would be required to conform their master plans and  
31 development ordinances with the regional master plan developed by  
32 the Highlands Water Protection and Planning Council and in which the  
33 strict DEP permitting requirements would apply, will be delineated  
34 based upon natural resource data assembled by the United States  
35 Forest Service, Rutgers, The State University, and the New Jersey  
36 Water Supply Authority. That area will be translated to on-the-  
37 ground, and easily identified reference points, such as road  
38 descriptions, survey lines, and municipal boundaries, by May 1, 2004,  
39 or as soon thereafter as may be possible. This legislation will be  
40 amended before it is enacted into law to incorporate this narrative  
41 description of the preservation area as part of the Highlands Water  
42 Protection and Planning Act.

43

44

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      The planning area of the Highlands Region, in which municipal  
conformance with the council's regional master plan is optional, and  
in which the strict DEP permitting requirements would not apply,  
would consist of all that area of the Highlands Region not within the

1 preservation area.

2

3

IV

4

5 The first tier of water and natural resource protection for the  
6 Highlands Region established in this bill consists of a planning and  
7 preservation strategy developed and implemented at the local and  
8 regional level. In this light, the bill would establish the Highlands  
9 Water Protection and Planning Council, a 15-member body appointed  
10 by the Governor, with the advice and consent of the Senate, and  
11 charged with preparing and implementing a regional master plan for  
12 the Highlands Region. The membership of the council would consist  
13 of eight residents of the counties of Bergen, Hunterdon, Morris,  
14 Passaic, Somerset, Sussex, or Warren, five of whom would be elected  
15 municipal officials and three of whom would be elected county  
16 officials. Of these eight people, there would be at least one resident  
17 from each of the counties. The other seven members of the council  
18 would consist of seven residents of the State. Members of the council  
19 would serve for terms of five years, and without compensation. The  
20 Governor would appoint the chairperson of the council, and the  
21 council would appoint an executive director. This bill allows the  
22 Governor to veto any action taken by the council.

23 The Highlands Water Protection and Planning Council would be  
24 required to adopt a regional master plan for the Highlands Region  
25 within 18 months of the council's first meeting. The goals of the  
26 regional master plan with respect to the preservation area would be to:  
27 protect, restore, and enhance the quality and quantity of surface and  
28 ground waters; preserve extensive and contiguous areas of land in  
29 their natural state, protect the contiguous forests, wetlands, vegetated  
30 stream corridors, steep slopes, and critical habitats; preserve farmland  
31 and historic resources; promote compatible agricultural, horticultural,  
32 recreational, and cultural land uses; and prohibit or limit to the  
33 maximum extent possible construction or development which is  
34 incompatible with the preservation of the Highlands.

35 With respect to the planning area the goals of the regional master  
36 plan would be to: protect surface and ground waters; preserve to the  
37 maximum extent possible any environmentally sensitive lands; protect  
38 the essential character of the Highlands environment; preserve  
39 farmland and historic resources; and encourage appropriate  
40 development, redevelopment, and economic growth consistent with  
41 the State Development and Redevelopment Plan and smart growth  
42 strategies and principles.

43 The regional master plan would consist of several components.  
44 Among these would be: a resource assessment which determines the  
45 amount and type of human development and activity which the  
46 ecosystem of the Highlands Region can sustain; a land use capability

1 map for the preservation area based on the standards adopted by the  
2 DEP for the review of development in the preservation area; a  
3 preservation zone element identifying areas in the preservation area  
4 in which development would be prohibited; an element detailing  
5 minimum standards for municipal and county master plans and  
6 development regulations in the preservation area; an assessment which  
7 determines the amount and type of human development and activity  
8 which the ecosystem of the Highlands Region can sustain while still  
9 maintaining the overall ecological values thereof; an assessment of  
10 scenic, aesthetic, cultural, historic, open space, farm land, and outdoor  
11 recreation resources of the region; an assessment of opportunities for  
12 appropriate economic growth, development, and redevelopment; a  
13 financial component detailing the cost of implementing the regional  
14 master plan, including payments in lieu-of-taxes, and acquisition of  
15 lands for preservation or recreation and conservation purposes; a  
16 component to provide for local government and public input into the  
17 council's operations; and a coordination and consistency component  
18 which details the ways in which local, State, and federal programs and  
19 policies may best be coordinated to promote the goals and policies of  
20 the regional master plan.

21 Within six months after the Highlands Water Protection and  
22 Planning Council adopts the regional master plan, the governing body  
23 of each municipality and county located wholly or partially in the  
24 preservation area would be required to revise its master plan and  
25 development regulations to conform them with the requirements of the  
26 regional plan and to submit the revisions to the council. The council  
27 would be authorized to approve or disapprove the revisions and to  
28 require additional changes. If such a municipality or county in the  
29 preservation area does not conform its master plan and development  
30 regulations to the regional master plan, the council would be  
31 authorized to enforce the provisions of the regional master plan and to  
32 essentially enforce the "Municipal Land Use Law" in the municipality  
33 or county and issue stop construction orders. In addition, the council  
34 would have call up review authority over any local application for  
35 development in a municipality or county in the preservation area. Any  
36 municipality or county in the planning area may elect to conform its  
37 master plan and development regulations to the appropriate provisions  
38 of the regional master plan.

39 In addition to the adoption of the regional master plan, the  
40 Highlands Water Protection and Planning Council would be required  
41 to develop and implement a transfer of development rights program.  
42 This bill authorizes the council to use the existing State Transfer of  
43 Developments Rights Bank or to establish a bank specifically for the  
44 Highlands Region. The council would also be authorized to review  
45 significant capital projects of the State or local governments in the  
46 preservation area.

1 This bill also establishes a mechanism under which any municipality  
2 in the preservation area would be entitled to State aid to compensate  
3 for any decrease in the aggregate amount of property tax revenues  
4 derived from the taxation of real property in that portion of the  
5 municipality located in the preservation area that is directly  
6 attributable to the implementation of the provisions of this bill. The  
7 council would annually calculate the amount to which each  
8 municipality is entitled, and would certify and transmit these amounts  
9 to the State Treasurer and to the Director of the Division of Local  
10 Government Services in the Department of Community Affairs. The  
11 State Treasurer would then include within the State Treasurer's annual  
12 budget request for State aid the amounts certified by the council.

13 This bill would also direct the Attorney General to provide, when  
14 certain requirements have been met, legal representation to any  
15 requesting local government unit located in the Highlands Region in  
16 any cause of action filed against the local government unit and  
17 contesting an act or decision of the local government unit taken or  
18 made under authority granted pursuant to any provision of this bill or  
19 to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et  
20 seq.), R.S.40:27-1 et seq., or the "State Uniform Construction Code  
21 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

22

23

V

24

25 The second tier of water and natural resource protection for the  
26 preservation area of the Highlands Region established in this bill  
27 consists of the imposition of environmentally protective standards for  
28 the review and permitting of major development by the DEP. Most  
29 development of any significant impact currently requires one or more  
30 State level water and land use permits issued by the DEP under the  
31 authority of a wide umbrella of environmental laws and their  
32 accompanying rules and regulations. This bill would increase the  
33 standards imposed for the issuance of, and would coordinate and  
34 consolidate the review of, these permits for development in the  
35 preservation area of the Highlands Region. These more stringent  
36 standards would also be incorporated into the land use capability  
37 component of the regional master plan adopted by the Highlands  
38 Water Protection and Planning Council, which would in turn be  
39 reflected in the revised municipal and county master plans and  
40 development regulations. Thus, in terms of the overall structure of  
41 this bill, these standards (the authorization for which is set forth in  
42 sections 31 to 35 of this bill) form a tie between the State and regional  
43 preservation approaches in this bill.

44 This bill essentially directs the DEP to develop and enforce two  
45 chronologically sequential environmental permitting programs and  
46 standards in the preservation area of the Highlands. Both permitting

1 programs and standards would apply to permits for major  
2 development. As used in this bill, "major development" means any  
3 non-residential development, any residential development disturbing  
4 one acre or more of land or increasing impervious surface by a quarter  
5 acre or more, and any residential development that does not meet  
6 these requirements but which does require an environmental land use  
7 or water permit. This bill defines an environmental land use or water  
8 permit to include a permit, approval, or other authorization issued  
9 pursuant to the "Freshwater Wetlands Protection Act," the "Water  
10 Supply Management Act," the "Water Pollution Control Act," "The  
11 Realty Improvement Sewerage and Facilities Act (1954)," the "Water  
12 Quality Planning Act," the "Safe Drinking Water Act," or the "Flood  
13 Hazard Area Control Act;" or an approval for an individual subsurface  
14 sewage disposal system from a delegated local health agency pursuant  
15 to the "County Environmental Health Act."

16 The first DEP permitting program would take effect upon  
17 enactment of the bill. Thereafter, any person proposing a major  
18 development in the preservation area would be required to receive a  
19 Highlands Preservation Area approval. This new approval would  
20 consist of the appropriate aspects of the regulatory requirements of  
21 existing environmental land use and water permits, as well as  
22 additional statutorily established standards in the bill that are self  
23 executing, which is to say that no rules and regulations would be  
24 required to implement them. These new requirements would require:  
25 that a 300-foot buffer, in which major development would be  
26 prohibited, be established adjacent to all Highlands open waters (which  
27 includes streams, wetlands, and other bodies of surface water); that the  
28 quality of all Highlands open waters be maintained and not degraded;  
29 that the review of a water diversion permit be triggered by a more than  
30 50,000 gallon per day diversion (the current threshold for the rest of  
31 the State is more than 100,000 gallons); that a zero net fill requirement  
32 be met for flood hazard areas; that the antidegradation and other  
33 provisions applicable to category one waters be applied to Highlands  
34 open waters; that impervious surface of more than three percent of the  
35 land area of a site would be prohibited on existing lots; that  
36 development, excluding linear development, would be prohibited on  
37 steep slopes with a grade of 20% or greater; and that upland forest  
38 areas would not be disturbed, with certain exceptions . The Highlands  
39 Preservation Area approval program would be in effect for the first  
40 nine months following enactment of the bill.

41 The second and permanent DEP permitting program for the  
42 preservation area, the Highlands permitting review program, would be  
43 adopted as immediately effective rules and regulations within nine  
44 months after enactment of the bill. These rules and regulations would  
45 be adopted without following the usual notice and comment provisions  
46 of the "Administrative Procedure Act," would be in effect for not more

1 than one year, and would thereafter be adopted pursuant to the normal  
2 notice and comment provisions of the "Administrative Procedure Act."  
3 These rules and regulations would establish a Highlands permitting  
4 review program, the structure and requirements for which would  
5 essentially track the requirements for the statutorily established  
6 Highlands Preservation Area approval. The bill provides, however, for  
7 special treatment by the Highlands permitting program of certain single  
8 family dwellings and for hardship waivers for certain single family  
9 dwellings. In addition, this bill would exempt from the requirement to  
10 obtain a Highlands permitting review any major development for which  
11 all DEP environmental land use and water permits and local permits  
12 and approvals have been obtained. This bill would authorize the DEP  
13 to issue general permits under the Highlands permitting review  
14 program, and authorizes the DEP to charge an application fee. This  
15 bill also sets forth detailed and environmentally protective guidelines  
16 that DEP must follow when reviewing and issuing a Highlands  
17 permitting review approval. This bill also includes a penalty section  
18 which allows the DEP to impose civil administrative penalties for  
19 certain violations of the bill or DEP's rules and regulations adopted  
20 pursuant thereto. A person who violates certain provisions of the bill  
21 or the DEP's rules and regulations adopted pursuant thereto could also  
22 be subject to civil and criminal penalties.

23

24

## VI

25

26 This bill also contains provisions providing protection for the equity  
27 in land of landowners or farmers who decide to sell their property, or  
28 in the case of farmers a development easement, to the State, the State  
29 Agriculture Development Committee in the case of farmland, or a local  
30 government unit or a non-profit organization. In such cases this bill  
31 provides for a special appraisal process to account for any decrease  
32 in the value of the property which may have been caused by the  
33 regulatory requirements imposed by the bill. This appraisal system is  
34 modeled after that already provided for in law for the Green Acres and  
35 farmland preservation programs. Only landowners who have owned  
36 the subject land continuously from the date of enactment of this bill  
37 until the date of the proposed acquisition, with certain exceptions,  
38 would be eligible for the special appraisal system. In addition, any  
39 landowner would be required to choose between the appraisal system  
40 established in this bill or the two other existing appraisal systems  
41 currently in law.