

SENATE, No. 1

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 29, 2004

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

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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
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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

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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

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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.

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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

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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.