

P.L. 2021, CHAPTER 195, *approved August 10, 2021*
Assembly, No. 5822

1 **AN ACT** renaming the Dismal Swamp and Dismal Swamp
2 Preservation Commission and amending P.L.2009, c.132.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2009, c.132 (C.40:55D-88.1) is amended to
8 read as follows:

9 1. This act shall be known and may be cited as the **["Dismal**
10 **Swamp]** "Peter J. Barnes III Wildlife Preservation Act."
11 (cf: P.L.2009, c.132, s.1)

12
13 2. Section 2 of P.L.2009, c.132 (C.40:55D-88.2) is amended to
14 read as follows:

15 2. The Legislature finds and declares that:

16 a. The Dismal Swamp Conservation Area in Middlesex County
17 is approximately 660 acres of freshwater wetlands, forested
18 uplands, and meadows in a densely populated, highly developed
19 central part of the State, offering unique natural habitat including
20 federal priority wetlands;

21 b. The Dismal Swamp Conservation Area is a birding oasis in a
22 densely developed region of the State where over 175 different bird
23 species have been spotted, including the threatened and endangered
24 grasshopper sparrow and yellow-crowned night-heron;

25 c. In addition to over 175 bird species, 25 mammals and over a
26 dozen reptile and amphibian species have been sighted in the
27 Dismal Swamp Conservation Area;

28 d. Archeological digs in the Dismal Swamp Conservation Area
29 have uncovered at least five significant archeological sites,
30 including one at least 10,000 years old;

31 e. This area, spanning Edison Township, Metuchen Borough,
32 and South Plainfield Borough in Middlesex County, represents one
33 of the last remaining wetland ecosystems in a highly urbanized
34 environment in the State;

35 f. The area consists of privately and publicly owned parcels of
36 land within three municipalities, each with its own planning and
37 zoning authority, and as a result, decisions concerning development
38 within the area are made without a coherent plan; and

39 g. It is therefore appropriate and in the best interests of the
40 State to encourage the local governing bodies of Edison Township,
41 Metuchen Borough, and South Plainfield Borough, respectively, in

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

Matter underlined thus is new matter.

1 Middlesex County to establish a **【Dismal Swamp】** Peter J. Barnes
2 III Wildlife Preservation Commission to provide comprehensive
3 regulatory authority and regional planning for the area with a
4 primary focus on protecting and preserving the ecological,
5 historical, and recreational values of the area.

6 (cf: P.L.2009, c.132, s.2)
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8 3. Section 3 of P.L.2009, c.132 (C.40:55D-88.3) is amended to
9 read as follows:

10 3. As used in this act:

11 "Application for development" means the application form and
12 all accompanying documents required by municipal ordinance for
13 approval of a subdivision plat, site plan, planned development,
14 conditional use, zoning variance or other permit as provided in the
15 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

16 "Commission" means the **【Dismal Swamp】** Peter J. Barnes III
17 Wildlife Preservation Commission established pursuant to section 4
18 of this act upon adoption of authorizing resolutions by the local
19 governing bodies of Edison Township, Metuchen Borough, and
20 South Plainfield Borough in Middlesex County, respectively.

21 **【"Dismal Swamp"】** "Peter J. Barnes III Wildlife Preserve"
22 means the area located within Edison Township, Metuchen
23 Borough, and South Plainfield Borough in Middlesex County as
24 delineated by a metes and bounds description approved by
25 resolution adopted by the respective local governing bodies of those
26 municipalities.

27 "Project" means any structure, land use change, or public
28 improvement for which a permit from, or determination by, the
29 municipality is required, which shall include, but not be limited to,
30 building permits, zoning variances, and excavation permits.

31 (cf: P.L.2009, c.132, s.3)
32

33 4. Section 4 of P.L.2009, c.132 (C.40:55D-88.4) is amended to
34 read as follows:

35 4. a. Upon adoption of an authorizing resolution by the local
36 governing body of Edison Township, Metuchen Borough, and South
37 Plainfield Borough, respectively, in Middlesex County, there is
38 established the **【Dismal Swamp】** Peter J. Barnes III Wildlife
39 Preservation Commission. The commission shall consist of nine
40 members, appointed and qualified as follows, provided however,
41 that no more than five members shall be of the same political party
42 and no more than three members shall be appointed from any on
43 municipality:

44 (1) Two residents of Edison Township, appointed by the
45 governing body of the municipality;

46 (2) Two residents of Metuchen Borough, appointed by the
47 governing body of the municipality;

- 1 (3) Two residents of South Plainfield Borough, appointed by the
2 governing body of the municipality;
- 3 (4) Two elected officials from Middlesex County, appointed by
4 agreement of the local governing bodies of Edison Township,
5 Metuchen Borough, and South Plainfield Borough; and
- 6 (5) one representative of the Edison Wetlands Association,
7 appointed by agreement of the local governing bodies of Edison
8 Township, Metuchen Borough, and South Plainfield Borough;
- 9 b. Each member shall serve for a term of five years. Each
10 member shall serve for the term of the appointment and until a
11 successor shall have been appointed and qualified. Any vacancy
12 shall be filled in the same manner as the original appointment for
13 the unexpired term only.
- 14 c. Any member of the commission may be removed by
15 adoption of a resolution by the local governing bodies of Edison
16 Township, Metuchen Borough, and South Plainfield Borough for
17 cause after a public hearing;
- 18 d. Each member of the commission shall take and subscribe to
19 an oath to perform the duties of the office faithfully, impartially,
20 and justly to the best of their ability.
- 21 e. The members of the commission shall serve without
22 compensation, but the commission may reimburse its members for
23 necessary expenses incurred in the discharge of their duties.
- 24 f. The commission shall select from its members a chairperson
25 and vice-chairperson, and may employ an executive director, who
26 may also serve as secretary, and a treasurer. The commission may
27 also appoint, retain and employ, without regard to the provisions of
28 Title 11A, Civil Service, of the New Jersey Statutes, such officers,
29 agents, employees and experts as it may require, and it shall
30 determine their qualifications, terms of office, duties, services and
31 compensation. The local governing bodies may provide
32 administrative support to the commission.
- 33 g. The powers of the commission shall be vested in the
34 members thereof in office from time to time, and a majority of the
35 total authorized membership of the commission shall constitute a
36 quorum at any meeting thereof. Action may be taken and motions
37 and resolutions adopted by the commission at any meeting thereof
38 by the affirmative vote of a majority of the total authorized
39 membership; provided, however, that the commission may
40 designate one or more of its agents or employees to exercise such
41 administrative functions, powers, and duties, as it may deem proper,
42 under its supervision and control. No vacancy in the membership of
43 the commission shall impair the right of a quorum to exercise all the
44 rights and perform all the duties of the commission.
- 45 h. No member, officer, employee, or agent of the commission
46 shall be financially interested, either directly or indirectly, in any
47 project, any part of a project area, or an application for
48 development, other than a residence, or in any contract, sale,

1 purchase, lease, or transfer of real or personal property located
2 within the boundaries of the **【Dismal Swamp】** Peter J. Barnes III
3 Wildlife Preserve.

4 (1) Any contract or agreement knowingly made in contravention
5 of this subsection is voidable.

6 (2) Any person who willfully violates the provisions of this
7 subsection shall forfeit office or employment.

8 (cf: P.L.2009, c.132, s.4)

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10 5. Section 5 of P.L.2009, c.132 (C.40:55D-88.5) is amended to
11 read as follows:

12 5. a. Upon establishment of the commission pursuant to
13 section 4 of this act and appointment of its members,
14 notwithstanding any provision of the "Municipal Land Use Law,"
15 P.L.1975, c.291 (C.40:55D-1 et seq.), to the contrary, the
16 commission shall review and approve, reject or modify all
17 applications for development within the **【Dismal Swamp】** Peter J.
18 Barnes III Wildlife Preserve pursuant to P.L.1975, c.291
19 (C.40:55D-1 et seq.). The commission shall exercise any or all of
20 the powers and duties of a municipal planning board and any or all
21 or the powers and duties of a county planning board for the **【Dismal**
22 **Swamp】** Peter J. Barnes III Wildlife Preserve.

23 No application for development shall be required to be reviewed
24 and approved by both the commission and the planning board of a
25 constituent municipality.

26 b. The commission shall review and approve, reject, or modify
27 any State project planned within the **【Dismal Swamp】** Peter J.
28 Barnes III Wildlife Preserve, and submit its decision to the
29 Governor and the commissioner of the department proposing the
30 project.

31 c. The review of an application for development shall not be
32 contingent upon the adoption of the master plan pursuant to section
33 6 of this act; however, upon adoption of the master plan, any
34 application for development shall be reviewed to ensure that the
35 actions proposed in the application also conform to the master plan.

36 Until the adoption of the master plan pursuant to section 6 of this
37 act, the decisions of the commission shall be based upon the
38 municipal master plans, ordinances, and resolutions of Edison
39 Township, Metuchen Borough, and South Plainfield Borough,
40 adopted pursuant to the provisions of the "Municipal Land Use
41 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

42 d. The commission shall coordinate and support activities by
43 citizens' groups to promote and preserve the **【Dismal Swamp】** Peter
44 J. Barnes III Wildlife Preserve, and shall actively seek funds for the
45 purchase and preservation of lands within **【Dismal Swamp】** the
46 Peter J. Barnes III Wildlife Preserve for recreation and conservation
47 purposes.

1 e. In accordance with the provisions of section 4 of P.L.1975,
2 c.291 (C.40:55D-8), the commission may establish and charge
3 reasonable fees for the review of applications for development
4 submitted to the commission and for other services the commission
5 may provide. Fees collected pursuant to this subsection shall be
6 deposited into a separate account, and shall be dedicated for use by
7 the commission solely for the purposes of administering and
8 enforcing its responsibilities pursuant to this act.

9 (cf: P.L.2009, c.132, s.5)

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11 6. Section 6 of P.L.2009, c.132 (C.40:55D-88.6) is amended to
12 read as follows:

13 6. a. The commission shall prepare, or cause to be prepared,
14 after holding one public hearing in each of the three municipalities
15 within **【Dismal Swamp】** the Peter J. Barnes III Wildlife Preserve, a
16 master plan for the physical, economic and social development of
17 the **【Dismal Swamp】** Peter J. Barnes III Wildlife Preserve with
18 elements similar to those provided for municipal master plans in
19 section 19 of P.L.1975, c.291 (C.40:55D-28), as the commission
20 determines to be appropriate for the preservation of the ecological
21 and historical nature of the **【Dismal Swamp】** Peter J. Barnes III
22 Wildlife Preserve.

23 The master plan shall include a report presenting the objectives,
24 assumptions, standards and principles which are embodied in the
25 various interlocking portions of the master plan. In preparing the
26 master plan or any portion thereof or amendment thereto the
27 commission shall give due consideration to: existing historical sites
28 and potential restorations or compatible development; the range of
29 uses and potential uses of the area in the developed communities
30 through which it passes; designated areas to be kept as
31 undeveloped, limited-access areas restricted to conservation or
32 passive recreation; and any other issues the commission deems
33 appropriate for the protection and enhancement of the area. In
34 preparing the master plan or any portion thereof or amendment
35 thereto, the commission shall consider existing patterns of
36 development and any relevant master plan or other plan of
37 development, and shall ensure widespread citizen involvement and
38 participation in the planning process.

39 b. The commission shall act in support of local suggestions or
40 desires to complement the master plan. Consultation, planning, and
41 technical expertise shall be made available to local planning bodies
42 that wish to implement land-use policies to enhance the area. The
43 commission shall act on or refer complaints by citizens' groups or
44 private residents who discover hazardous situations, pollution, or
45 evidence of noncompliance with use regulations.

46 (cf: P.L.2009, c.132, s.6)

