

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1

STATE OF NEW JERSEY

211th LEGISLATURE

DATED: JUNE 16, 2004

SUMMARY

- Synopsis:** The "Highlands Water Protection and Planning Act"; creates Highlands Water Protection and Planning Council; and dedicates a portion of realty transfer fee revenue annually for certain State aid purposes in the Highlands Region and the Pinelands area.
- Type of Impact:** Expenditure increase from the General Fund.
- Agencies Affected:** Departments of Environmental Protection, Agriculture, Community Affairs, Transportation, and Treasury; State Planning Commission; and affected municipalities and counties.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost - Undedicated	\$3,000,000 to \$4,000,000 annually		
State Cost - Dedicated	\$12,000,000 annually		
Local Cost	Indeterminate		

- ! The bill establishes a comprehensive, long-term approach to the protection and preservation of the drinking water and natural resources of the New Jersey Highlands Region. This area comprises nearly 800,000 acres in northern New Jersey, covering 88 municipalities.
- ! The Highlands Water Protection and Planning Council is established to develop a regional master plan, help manage the regulatory provisions of the bill, create a transfer of development rights (TDR) program, and provide financial assistance when needed.
- ! The bill annually dedicates \$12 million for 10 years and \$5 million thereafter from realty transfer fees to (1) compensate towns adversely affected by decreased property values; (2) support watershed moratorium offset aid; (3) award local grants; and (4) make five annual allocations of \$1.8 million to Pinelands communities to offset property tax increases. Other financial incentives are also provided to landowners and municipalities.

- ! The Office of Legislative Services (OLS) estimates that an annual State appropriation of \$3 million to \$4 million may be required to support the Council's operating budget. More funds may also be needed for startup costs, development of the regional master plan, and TDR development expenses.

BILL DESCRIPTION

Senate Bill No. 1 (1R) of 2004, the "Highlands Water Protection and Planning Act," establishes a comprehensive, long-term approach to the protection and preservation of the drinking water and natural resources of the New Jersey Highlands Region. The bill defines the Highlands Region and divides it into a preservation area, where development would be strictly regulated, and a planning area where development would not be as strictly controlled.

The bill establishes the Highlands Water Protection and Planning Council, an independent agency "in, but not of" the Department of Environmental Protection (DEP). Its major responsibilities would include preparing and implementing a regional master plan for the Highlands Region, exercising review authority over any local application for development within the preservation area, and reviewing publicly-funded capital projects. Pursuant to Council review and approval, municipalities and counties in the preservation area would be required to amend their master plans to conform with the regional master plan. The cost of making these revisions would be reimbursable by the State through the Council.

For the first nine months following enactment, the bill requires that most major development in the preservation area receive from the DEP a Highlands Preservation Area approval, a permit consisting of existing and new environmentally protective land use and water protection requirements. After that time period, the bill requires the DEP to adopt rules and regulations establishing a permanent Highlands permitting review and permit program.

The bill requires the Council to establish a transfer of development rights (TDR) program, which would include recommendations regarding receiving zones in the planning area, prior to the adoption of the regional master plan. The Council is authorized to use the existing State TDR Bank or to establish such a bank specifically for the Highlands Region. The bill provides financial incentives to municipalities in or outside the planning area that permit voluntary receiving zones within their boundaries. These incentives include planning grants up to \$250,000, reimbursement of costs to amend municipal development regulations, authorization to impose impact fees, and eligibility for State financial assistance. The bill also directs the State Office of Smart Growth to establish a pilot TDR program.

The bill establishes a funding mechanism under which a municipality in the preservation area could receive State aid to compensate for any decrease in the aggregate amount of property tax revenue that is directly attributable to the bill's implementation. Specifically, a newly created Highlands Municipal Property Tax Stabilization Board, along with county tax boards, would annually calculate and certify the amount to which each municipality is entitled. The certified sum would then be paid by the State Treasurer to each qualified municipality.

These particular State payments would be derived from the Highlands Municipal Property Tax Stabilization Fund, an account financed by the Highlands Protection Fund. The bill capitalizes the Highlands Protection Fund by dedicating to it \$12 million per year from State realty transfer fee revenues for the first 10 years following enactment, with \$5 million annually dedicated thereafter. The bill also directs the Highlands Protection Fund to annually allocate money for a revised watershed moratorium offset aid program, for any local grants awarded by the Council, and for Pinelands municipalities through a newly created Pinelands Property Tax

Assistance Fund. Under the bill, this fund would receive \$1.8 million annually for five years to help offset property tax increases in qualified Pinelands region communities.

Last, the bill contains landowner equity provisions designed to compensate landowners within the preservation area who decide to sell land or development rights to the State's Green Acres or farmland preservation programs. The bill provides that such lands could receive fair market compensation by using a two-part appraisal system modeled after the system used by these two programs. A hold harmless provision is also included to ensure that all counties receive equitable funding from these programs from fiscal years 2005-2009.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that the annual dedication of realty transfer fund monies for the purposes described therein will result in a proportional decrease in available balances in the General Fund. Notwithstanding this fact, the cost of implementing the bill will require State funding on an annual basis to support the basic operations of the Council, staff, offices and support services. Although staff size and needs are uncertain, the OLS estimates regular operating costs could approach \$3 million to \$4 million annually.

This projection is based on comparing the Council budget with the budgets of two other public entities that have missions similar to the proposed Council: the Pinelands Commission and the New Jersey (Hackensack) Meadowlands Commission. Both agencies receive approximately \$3 million annually for operational expenses. The Council budget may prove to be even higher due to the bill's requirement that it provide legal representation to any Highlands town having legal actions filed against it as a result of the act, and its role in developing a transfer of development rights (TDR) program. This last responsibility could incur significant expenses because it would require the Council to conduct real estate analyses and other related duties during the process of identifying so-called "sending and receiving" zones. Affected municipalities may also incur costs during this exercise. Financial assistance to offset some or all of such costs may be available from the State TDR Bank, which currently has a balance of approximately \$20 million, or from grants awarded by the Council.

With respect to the Council's one-time implementation costs, the OLS does not have sufficient information to provide a cost estimate at this time. Such costs could include capital and other start-up expenses for leases or rent, furniture, vehicles, etc. In addition, significant one-time costs may be incurred in the development of the regional master plan. On the plus side, the Council could eventually supplement its budget through application review fees, compensation for other regulatory duties performed on behalf of the State, or contributions from non-state funding sources such as the federal government, nonprofit organizations, or private donations.

The requirement that municipalities and counties in the Highlands preservation area adopt and submit revisions to their master plans and development regulations in order to conform to the regional master plan will incur certain costs. Cost estimates will vary widely depending on

the degree of difference between the local and regional plans. However, under the bill, these costs would be recouped through planning grants supported by the realty transfer fee dedication. It is unclear, however, whether all such costs will ultimately be covered by these grants, or whether there will be sufficient funding to meet all reimbursement claims from communities in both the preservation and planning areas.

The bill's potential fiscal impact on property tax values is addressed by the proposed Highlands Municipal Property Tax Stabilization Fund, which is established to compensate municipalities that experience decreased property tax collections as a result of the bill. Local fiscal impacts may also be mitigated by the bill's restoration (albeit revised) of the Watershed Moratorium Offset Aid program, which was discontinued in FY 2003. For comparison purposes, the State provided over \$16 million for this program from FY 1997 to FY 2002.

The Highlands Protection Fund will also provide property tax relief to certain Pinelands communities by allocating \$1.8 million annually for five years to the proposed Pinelands Property Tax Assistance Fund. For comparison purposes, the State has intermittently provided over \$9 million in property tax-related aid in the Pinelands area from FY 1985 through FY 2002.

With respect to the bill's fiscal impact on State agencies, the DEP is directed to establish upon enactment a Highlands Preservation Area approval process that would be required of all major development applicants. This approval process would consist mostly of existing permits plus some new regulatory requirements included in the bill. It would provide immediate review of development applications until a permanent Highlands permitting review program is established nine months later.

The bill allows the DEP to establish fees to meet all administrative costs of the new permitting program. For existing and future permit review functions under the bill, the DEP is allowed to charge appropriate fees to cover most or all of its administrative costs. Assuming that some additional staff may have to be hired to handle increased, first-year work levels under the new program, administrative costs may exceed review fee revenues for several years. State funding liability should eventually decrease, however, as the program stabilizes.

As to the potential costs incurred by the Department of Community Affairs (DCA) and other affected State agencies, the OLS does not have enough data to formulate an estimate of such expenses at this time.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.