

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1368**

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Senate Environment Committee reports favorably a committee substitute for Senate Bill No. 1368.

This committee substitute would establish a Smart Growth Ombudsman in the Department of Community Affairs to be appointed by, serve at the pleasure of, and report to the Governor. The Smart Growth Ombudsman would for smart growth areas: (1) make recommendations to the Governor and the departments concerning ways to expedite permit decisions; (2) be authorized to participate in the permit application and review process to ensure compliance with the expedited time frames established in the committee substitute for permit decisions in smart growth areas; and (3) maintain an informational website. The ombudsman would also review any new rules or regulations proposed by any State agency to determine whether the proposed rules or regulations, as they pertain to smart growth areas, are consistent with the State Development and Redevelopment Plan. A State agency may not file new rules or regulations for publication unless the Smart Growth Ombudsman makes that determination. The committee substitute allows the Chief Counsel to the Governor to waive this requirement upon a written determination that the proposed rules are required to implement a State or federal mandate. The committee substitute would require the ombudsman to prepare an annual report for the Governor and the Legislature, summarizing the activities of the ombudsman.

As defined by the committee substitute, smart growth area includes Planning Areas 1 and 2, designated centers and designated growth centers in an endorsed plan, as authorized pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), smart growth areas and planning areas in a master plan adopted by the New Jersey Meadowlands Commission, growth areas in the pinelands area, urban enterprise zones, and areas determined in need of redevelopment by the Commissioner of Community Affairs.

The committee substitute would also establish a Division of Smart Growth in the Department of Environmental Protection, the Department of Transportation, and the Department of Community Affairs. Each of the new Divisions of Smart Growth would be under

the direction of a director, appointed by the Governor, and reporting to the commissioner of the appropriate department. The Division of Smart Growth within each department would provide for the expediting of certain State permits in smart growth areas and provide for the creation of expedited permit mechanisms, such as permits-by-rule and general permits.

The committee substitute would require each of the three Divisions of Smart Growth to develop a program within 120 days of enactment, for the qualification and registration of professionals who would certify that a permit application meets the statutory and regulatory requirements. An applicant requesting an expedited review in a smart growth area would submit the application with all necessary documentation, the application fee, a request for an expedited review, and a certification by a registered and qualified professional that the application is complete and meets the statutory and regulatory requirements. The Director of the Division of Smart Growth would be required to determine the completeness of the application and take action on those permits on an expedited basis. Except for specified permits, the committee substitute provides that if the appropriate director fails to take action on the permit within the mandated time periods, generally 45 days, then the permit is deemed approved. The bill also establishes certain time limitations for the review of water allocation and New Jersey Pollutant Discharge Elimination System permits. The costs of the activities of the three Divisions of Smart Growth and the Smart Growth Ombudsman would be funded solely through permit fees for expedited permits in the smart growth areas. The committee substitute also provides that its provisions shall not be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal program.

Section 10 of the committee substitute would require the creation of permits-by-rule and general permits for certain environmental permits and certain highway occupancy permits.

Further, the committee substitute would establish a Smart Growth Unit within the Office of Administrative Law for expedited review of the expedited permit decisions. The Office of Administrative Law would be required to determine on an expedited basis whether a permit application is complete, whether a permit that has been denied by the Division of Smart Growth should be approved or approved with conditions, and whether a permit's conditions should be deleted or amended. The decisions of the administrative law judge in the Smart Growth Unit are binding and may not be subject to further review or appeal by an applicant or the appropriate Division of Smart Growth. The committee substitute provides that the applicant who does not request the expedited appeal process established by the committee substitute would retain the right to an administrative hearing and decision on a permit decision pursuant to the current procedure established by the "Administrative Procedure Act," (APA) P.L.1968,

c.410 (C.52:14B-1 et seq.).

Finally, the committee substitute would provide that none of its provisions apply to the preservation area of the Highlands Region, as defined pursuant to P.L.2004, c. (C.) (now awaiting the Governor's action as Senate Bill No. 1).