

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1368

STATE OF NEW JERSEY
211th LEGISLATURE

ADOPTED JUNE 14, 2004

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

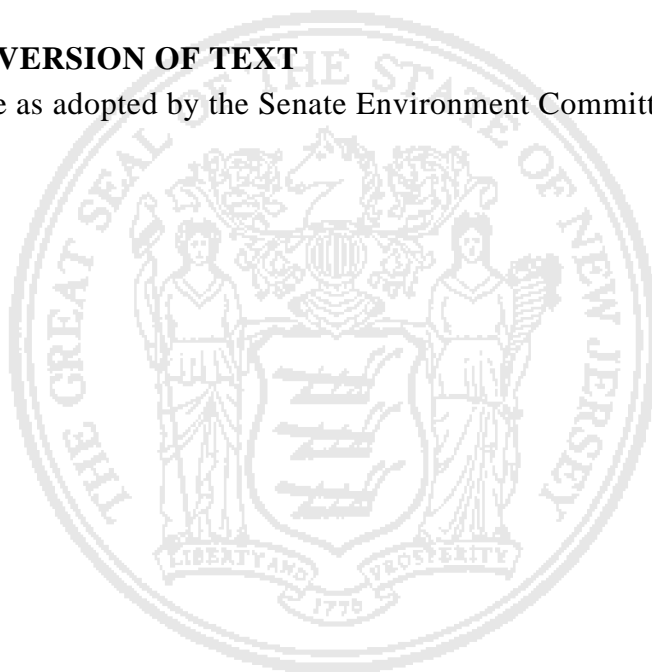
Senators Scutari, Coniglio and Madden

SYNOPSIS

Streamlines certain permitting in smart growth areas.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment Committee.



1 AN ACT concerning implementation of the State Development and
2 Redevelopment Plan, establishing a Smart Growth Ombudsman in
3 the Department of Community Affairs, establishing a Division of
4 Smart Growth in the Department of Environmental Protection, a
5 Division of Smart Growth in the Department of Transportation,
6 and a Division of Smart Growth in the Department of Community
7 Affairs, providing for the expediting of certain State permits in
8 smart growth areas, supplementing P.L.1978, c.67 (C.52:14F-1 et
9 seq.), and supplementing Titles 13, 27, and 52 of the Revised
10 Statutes.

11

12 **BE IT ENACTED** by the Senate and General Assembly of the State
13 of New Jersey:

14

15 1. As used in sections 2 and 3 of P.L. , c. (C.) (pending
16 before the Legislature as this bill):

17 "Applicant" means any person applying for a permit pursuant to
18 sections 5, 7, 9 or 10 of P.L. , c. (C.) (pending before the
19 Legislature as this bill);

20 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
21 Growth Ombudsman appointed by the Governor pursuant to section
22 2 of P.L. , c. (C.) (pending before the Legislature as this bill);

23 "Permit" means any permit or approval issued by the Department
24 of Environmental Protection, pursuant to any law, or any rule or
25 regulation adopted pursuant thereto, provided that "permit" shall not
26 include any approval of a grant, or a permit issued pursuant to the
27 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
28 seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212
29 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970,
30 c.39 (C.13:1E-1 et seq.), or the "Radiation Protection Act," P.L.1958,
31 c.116 (C.26:2D-1 et seq.), any permit or approval issued by the
32 Department of Transportation pursuant to any law, or any rule or
33 regulation adopted pursuant thereto, or any permit or approval
34 required as a condition of development or redevelopment issued by the
35 Department of Community Affairs pursuant to any law or any rule or
36 regulation adopted pursuant thereto;

37 "Person" means any individual, corporation, company, partnership,
38 firm, association, owner or operator of a treatment works, political
39 subdivision of this State, or State or interstate agency; and

40 "Smart growth area" means an area designated pursuant to
41 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
42 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
43 a designated growth center in an endorsed plan; a smart growth area
44 and planning area designated in a master plan adopted by the New
45 Jersey Meadowlands Commission pursuant to subsection (i) of section
46 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the

1 comprehensive management plan prepared and adopted by the
2 Pinelands Commission pursuant to section 7 of the "Pinelands
3 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
4 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
5 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
6 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
7 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
8 Community Affairs; or similar areas designated by the Department of
9 Environmental Protection.

10

11 2. a. There is created in the Department of Community Affairs a
12 Smart Growth Ombudsman. The Smart Growth Ombudsman shall be
13 appointed by the Governor, serve at the pleasure of the Governor, and
14 report to the Governor.

15 b. The activities and duties of the Smart Growth Ombudsman
16 shall be funded out of revenues collected pursuant to the fee schedule
17 adopted pursuant to subsection d. of section 5, subsection d. of section
18 7 and subsection d. of section 9 of P.L. , c. (C.) (pending
19 before the Legislature as this bill) and remitted to the Smart Growth
20 Ombudsman.

21 c. The Smart Growth Ombudsman may call upon the assistance of
22 the services of those employees of any State, county or municipal
23 department, board, bureau, commission or agency as may be required
24 and as may be necessary for its purposes. In addition, the Smart
25 Growth Ombudsman may call upon any department, agency or office
26 of the State of New Jersey for such documents, materials and
27 information as it may deem necessary.

28

29 3. The Smart Growth Ombudsman shall:

30 a. in conjunction with the Directors of the Divisions of Smart
31 Growth established pursuant to sections 5, 7 and 9 of P.L. , c.
32 (C.) (pending before the Legislature as this bill), review all
33 relevant permit programs and requirements and make
34 recommendations to the Governor and the departments regarding
35 integration of multiple review and approval processes and
36 recommendations on those permits for which approval may be
37 expedited in smart growth areas through mechanisms such as permits-
38 by-rule, general permits or qualification of professionals;

39 b. maintain and operate an informational website which shall
40 enable any person to gain access to information regarding the statutory
41 obligations and authority of the Smart Growth Ombudsman, including
42 those services which the ombudsman may provide to State permit
43 applicants to facilitate or expedite permit approval and issuance;

44 c. at the request of an applicant, participate in the permit
45 application and review process to ensure compliance with the time
46 frames set forth in subsection c. of section 5, subsection c. of section

1 7 or subsection c. of section 9, or subsections c. and d. of section 10,
2 as the case may be, of P.L. , c. (C.) (pending before the
3 Legislature as this bill);

4 d. review any new rules or regulations proposed by any State
5 agency and determine whether the proposed rules or regulations, as
6 they pertain to the smart growth areas, are consistent with the State
7 Development and Redevelopment Plan. In the event that the Smart
8 Growth Ombudsman determines that the proposed rules or regulations
9 in the smart growth areas are not consistent with the State
10 Development and Redevelopment Plan, the Smart Growth Ombudsman
11 shall return the proposed rules or regulations to the State agency with
12 recommended amendments necessary to make the proposed rules or
13 regulations consistent with the State Development and Redevelopment
14 Plan. A State agency shall not file proposed new rules or regulations
15 for publication in the New Jersey Register unless and until the Smart
16 Growth Ombudsman determines the proposed rules or regulations in
17 the smart growth areas are consistent with the State Development and
18 Redevelopment Plan. The requirements of this section may be waived
19 upon a written determination by the Chief Counsel to the Governor
20 that the proposed rules or regulations are required to implement a
21 federal or State mandate; and

22 e. one year after the date of enactment of this act and annually
23 thereafter, prepare a report which shall be transmitted to the Governor
24 and the Legislature summarizing the activities of the ombudsman,
25 including, but not limited to, a description of the permits, permit
26 mechanisms, and permit processes that have been streamlined, a list of
27 permit applications in which the ombudsman has participated, any
28 rules or regulations that have been reviewed and the consistency
29 determinations made by the ombudsman, and a report concerning the
30 programs established for the registration and qualification of
31 professionals by the Director of the Division of Smart Growth in the
32 Department of Environmental Protection, the Department of
33 Transportation, and the Department of Community Affairs.

34 As used in this section, "State agency" shall not include the
35 Pinelands Commission established pursuant to P.L.1979, c.111
36 (C.13:18A-1 et seq.), the Highlands Water Protection and Planning
37 Council established pursuant to P.L. , c. (C.) (pending before
38 the Legislature as Senate Bill No. 1), or the New Jersey Meadowlands
39 Commission established pursuant to P.L.1968, c.404 (C.13:17-1 et
40 seq.), or any independent authority or commission.

41

42 4. As used in sections 5 and 10 of P.L. , c. (C.) (pending
43 before the Legislature as this bill):

44 "Applicant" means any person applying for a permit pursuant to
45 sections 5 or 10 of P.L. , c. (C.) (pending before the
46 Legislature as this bill);

1 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
2 Growth Ombudsman appointed by the Governor pursuant to section
3 2 of P.L. , c. (C.) (pending before the Legislature as this
4 bill);

5 "Permit" means any permit or approval issued by the Department
6 of Environmental Protection pursuant to any law, or any rule or
7 regulation adopted pursuant thereto, provided that "permit" shall not
8 include any approval of a grant, or a permit issued pursuant to the
9 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
10 seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212
11 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970,
12 c.39 (C.13:1E-1 et seq), or the "Radiation Protection Act," P.L.1958,
13 c.116 (C.26:2D-1 et seq.);

14 "Person" means any individual, corporation, company, partnership,
15 firm, association, owner or operator of a treatment works, political
16 subdivision of this State, or State or interstate agency; and

17 "Smart growth area" means an area designated pursuant to
18 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
19 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
20 a designated growth center in an endorsed plan; a smart growth area
21 and planning area designated in a master plan adopted by the New
22 Jersey Meadowlands Commission pursuant to subsection (i) of section
23 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
24 comprehensive management plan prepared and adopted by the
25 Pinelands Commission pursuant to section 7 of the "Pinelands
26 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
27 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
28 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
29 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
30 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
31 Community Affairs; or similar areas designated by the Department of
32 Environmental Protection.

33

34 5. a. There is established in the Department of Environmental
35 Protection a Division of Smart Growth under the direction of a
36 director, who shall be appointed by the Governor and report to the
37 Commissioner of Environmental Protection. The director shall review
38 and take action on permits for which the applicant has requested
39 expedited review pursuant to this section.

40 b. The director shall coordinate and expedite the review of permits
41 issued by the division with the Smart Growth Ombudsman appointed
42 pursuant to section 2 of P.L. , c. (C.) (pending before the
43 Legislature as this bill).

44 c. (1) An applicant may request an expedited permit application
45 review for a proposed project in a smart growth area. In order to
46 qualify for expedited permit application review pursuant to this

1 section, an applicant shall include with a permit application all
2 necessary documentation, a request for expedited permit application
3 review, and the permit fee established in accordance with subsection
4 d. of this section. The permit application shall be signed by the
5 applicant and by a professional qualified and registered in accordance
6 with subsection e. of this section, certifying that a permit application
7 is complete and that the statutory and regulatory requirements for the
8 permit have been met by the applicant. A copy of the application and
9 the request shall also be submitted to the ombudsman and to the clerk
10 of the municipality and the clerk of the county in which the proposed
11 project is located. A permit application that qualifies for expedited
12 permit application review pursuant to this section shall be subject to
13 the following time frames:

14 (a) the division shall notify an applicant within 20 days after the
15 filing date if the permit application lacks a submission identified on a
16 checklist therefor, or a submission has not been completed. If an
17 application, including the permit fee and all necessary documentation,
18 is determined to be complete, or if a notice of incompleteness is not
19 provided within 20 days after the filing of the application, the
20 application shall be deemed complete for purposes of commencing a
21 technical review. In the case of a permit application affecting
22 wetlands, a complete application shall include an effective letter of
23 interpretation issued by the department concerning the delineation of
24 the wetlands;

25 (b) (i) except as otherwise provided in subsubparagraph (ii) of this
26 subparagraph, the division shall notify an applicant if the permit
27 application is technically complete or issue a notice of deficiency
28 within 45 days after the filing of the application. If an application is
29 determined to be technically complete, or if a notice of deficiency is
30 not issued within 45 days after the filing of the application, the
31 application shall be deemed technically complete. A notice of
32 deficiency shall itemize all deficiencies that must be addressed in order
33 for the application to be determined technically complete. A notice of
34 deficiency shall be deemed exclusive and further review for technical
35 completeness shall be limited to the items so identified;

36 (ii) in the case of water allocation permits issued pursuant to the
37 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
38 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
39 an unconfined aquifer or surface water body and New Jersey Pollutant
40 Discharge Elimination System permits issued pursuant to the "Water
41 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a
42 discharge of 1,000,000 gallons per day or greater, the division shall
43 notify an applicant if the permit application is technically complete or
44 issue a notice of deficiency within 60 days after filing of the
45 application. If an application is determined to be technically complete,
46 or if a notice of deficiency is not issued within 60 days after filing of

1 the application, the application shall be deemed technically complete;
2 (c) except as provided in subparagraphs (e) and (f) of this
3 paragraph, the division shall take action on a technically complete
4 permit application within 45 days, except that this time period may be
5 extended for a 30-day period by the mutual consent of the applicant
6 and the department. Except for any New Jersey Pollutant Discharge
7 Elimination System permit issued pursuant to the "Water Pollution
8 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) in the event that
9 the department fails to take action on an application for a permit
10 within the 45-day period specified herein, or within the periods set
11 forth in subparagraphs (e) and (f) of this paragraph, then the
12 application shall be deemed to have been approved;

13 (d) if more than one notice of deficiency is issued by the division,
14 the applicant may request an expedited hearing in accordance with
15 section 14 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) to determine whether the application is technically
17 complete;

18 (e) in the cases of water allocation permits issued pursuant to the
19 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
20 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
21 a confined aquifer and New Jersey Pollutant Discharge Elimination
22 System permits issued pursuant to the "Water Pollution Control Act,"
23 P.L.1977, c.74 (C.58:10A-1 et seq.) for a discharge of less than
24 1,000,000 gallons per day, after a permit application is deemed
25 complete, and after a 30-day public comment period, the department
26 shall take action on the permit within five days if minimal or no
27 comments were received in the public comment period, or within 15
28 days if more than minimal comments were received in the public
29 comment period; and

30 (f) in the cases of water allocation permits issued pursuant to the
31 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
32 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
33 an unconfined aquifer or surface water body and New Jersey Pollutant
34 Discharge Elimination System permits issued pursuant to the "Water
35 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a
36 discharge of 1,000,000 gallons per day or greater, after a permit
37 application is deemed complete, and after a 30-day public comment
38 period, the department shall take action on the permit within five days
39 if minimal or no comments were received in the public comment
40 period, or within 45 days if more than minimal comments were
41 received in the public comment period.

42 (2) Nothing in this subsection shall supersede shorter periods for
43 department action provided by applicable law.

44 d. The direct and indirect costs of personnel, equipment, operating
45 expenses, and activities of the division shall be funded solely through
46 permit fees for expedited permits issued in the smart growth areas

1 pursuant to this section. The department shall, in consultation with
2 the ombudsman, establish permit fees necessary for the department to
3 administer and enforce the expedited permit application review
4 program established pursuant to this section. The fee schedule
5 established pursuant to this subsection shall include the department's
6 pro rata share of the budget of the Smart Growth Ombudsman. Within
7 30 days after the date of enactment of P.L. , c. (C.) (pending
8 before the Legislature as this bill), the department, in consultation with
9 the ombudsman, shall publish a schedule of permit fees in the New
10 Jersey Register and may amend the fee schedule as necessary. The fee
11 schedule may provide for increased fees for complex projects.

12 e. (1) The Director of the Division of Smart Growth shall, within
13 120 days after the date of enactment of P.L. , c. (C.) (pending
14 before the Legislature as this bill), develop a program for the
15 qualification and registration of professionals who shall certify that a
16 permit application is complete and that the statutory and regulatory
17 requirements for the permit have been met by the applicant. The
18 requirements for qualification and registration may include, but shall
19 not be limited to, professional licensure relevant to the subject matter
20 of the permit, a review of projects undertaken by the professional
21 applying for qualification and registration, and a review of the nature
22 of the professional's services provided on each project.

23 (2) The director shall include in the program for the qualification
24 and registration of professionals any standards or requirements
25 necessary for proper administration and enforcement of the provisions
26 of P.L. , c. (C.) (pending before the Legislature as this
27 bill), and shall provide for the suspension or revocation of the
28 qualification and registration of professionals as provided in this
29 subsection.

30 (3) Any person who negligently violates any requirement of the
31 program established by the department for the qualification and
32 registration of professionals may lose professional licensure for one
33 year, may be barred from qualification and registration for a period of
34 three years, and the firm with which that individual is associated may
35 be barred from seeking qualification and registration for a period of
36 three years.

37 (4) If a person willfully or recklessly violates any requirement of
38 the program established by the department for the qualification and
39 registration of professionals, that individual shall lose professional
40 licensure for one year, shall be permanently barred from qualification
41 and registration, and the firm with which that individual is associated
42 shall be permanently barred from seeking qualification and registration.

43 (5) Prior to any suspension, revocation, or failure to renew a
44 person's qualification and registration, the department shall afford the
45 person or firm an opportunity for a hearing in accordance with the
46 provisions of the "Administrative Procedure Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.), except that, if the department has reason to
2 believe that a condition exists which poses an imminent threat to the
3 public health, safety or welfare, it may order the immediate suspension
4 of qualification and registration pending the outcome of the hearing.

5 f. The Director of the Division of Smart Growth, after
6 consultation with the Smart Growth Ombudsman, may adopt rules and
7 regulations in accordance with the "Administrative Procedure Act,"
8 P.L.1968, c.410 (C.52:14B-1 et seq.) as appropriate to implement the
9 requirements of this section and to encourage development in the
10 smart growth areas.

11 g. Nothing in this section shall be construed or implemented in
12 such a way as to modify any requirement of law that is necessary to
13 retain federal delegation to, or assumption by, the State of the
14 authority to implement a federal law or program.

15 h. Applications for an expedited permit application review
16 pursuant to subsection c. of this section shall not be accepted until 120
17 days following the date of enactment of P.L. , c. (C.) (pending
18 before the Legislature as this bill). Applications pending on the date
19 of enactment of P.L. , c. (C.) (pending before the Legislature
20 as this bill) shall, upon request of the applicant, be processed in the
21 expedited permit application review program when it becomes
22 effective. A permit application that is the subject of a request under
23 this provision shall be transferred to the Division of Smart Growth for
24 processing in accordance with P.L. , c. (C.) (pending before
25 the Legislature as this bill).

26

27 6. As used in section 7 of P.L. , c. (C.) (pending
28 before the Legislature as this bill):

29 "Applicant" means any person applying for a permit pursuant to
30 sections 7 or 10, as appropriate, of P.L. , c. (C.) (pending
31 before the Legislature as this bill);

32 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
33 Growth Ombudsman appointed by the Governor pursuant to section
34 2 of P.L. , c. (C.) (pending before the Legislature as this
35 bill);

36 "Permit" means any permit or approval issued by the Department
37 of Transportation pursuant to any law or any rule or regulation
38 adopted pursuant thereto;

39 "Person" means any individual, corporation, company, partnership,
40 firm, association, owner or operator of a treatment works, political
41 subdivision of this State, or State or interstate agency; and

42 "Smart growth area" means an area designated pursuant to
43 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
44 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
45 a designated growth center in an endorsed plan; a smart growth area
46 and planning area designated in a master plan adopted by the New

1 Jersey Meadowlands Commission pursuant to subsection (i) of section
2 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
3 comprehensive management plan prepared and adopted by the
4 Pinelands Commission pursuant to section 7 of the "Pinelands
5 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
6 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
7 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
8 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
9 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
10 Community Affairs; or similar areas designated by the Department of
11 Environmental Protection.

12

13 7. a. There is established in the Department of Transportation a
14 Division of Smart Growth under the direction of a director, who shall
15 be appointed by the Governor and report to the Commissioner of
16 Transportation. The director shall review and take action on permits
17 for which the applicant has requested expedited review pursuant to
18 this section.

19 b. The director shall coordinate and expedite the review of permits
20 issued by the division with the Smart Growth Ombudsman appointed
21 pursuant to section 2 of P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 c. (1) An applicant may request an expedited permit application
24 review for a proposed project in a smart growth area. In order to
25 qualify for expedited permit application review pursuant to this
26 section, an applicant shall include with a permit application all
27 necessary documentation, a request for expedited permit application
28 review, and the permit fee established in accordance with subsection
29 d. of this section. The permit application shall be signed by the
30 applicant and by a professional qualified and registered in accordance
31 with subsection e. of this section, certifying that a permit application
32 is complete and that the statutory and regulatory requirements for the
33 permit have been met by the applicant. A copy of the application and
34 the request shall also be submitted to the ombudsman and to the clerk
35 of the municipality and the clerk of the county in which the proposed
36 project is located. A permit application that qualifies for expedited
37 permit application review pursuant to this section shall be subject to
38 the following time frames:

39 (a) the division shall notify an applicant within 20 days after the
40 filing date if the permit application lacks a submission identified on a
41 checklist therefor, or a submission has not been completed. If an
42 application, including the permit fee and all necessary documentation,
43 is determined to be complete, or if a notice of incompleteness is not
44 provided within 20 days after the filing of the application, the
45 application shall be deemed complete for purposes of commencing a
46 technical review;

1 (b) the division shall notify an applicant if the permit application is
2 technically complete or issue a notice of deficiency within 45 days
3 after the filing of the application. If an application is determined to be
4 technically complete or if a notice of deficiency is not issued within 45
5 days after the filing of the application, the application shall be deemed
6 technically complete. A notice of deficiency shall itemize all
7 deficiencies that must be addressed in order for the application to be
8 determined technically complete. A notice of deficiency shall be
9 deemed exclusive and further review for technical completeness shall
10 be limited to the items so identified;

11 (c) the division shall take action on a technically complete permit
12 application within 45 days, except that this time period may be
13 extended for a 30-day period by the mutual consent of the applicant
14 and the department. In the event that the department fails to take
15 action on an application for a permit within the 45-day period specified
16 herein, then the application shall be deemed to have been approved;
17 and

18 (d) if more than one notice of deficiency is issued by the division,
19 the applicant may request an expedited hearing in accordance with
20 section 14 of P.L. , c. (C.) (pending before the Legislature
21 as this bill) to determine whether the application is technically
22 complete.

23 (2) Nothing in this subsection shall supersede shorter periods for
24 department action provided by applicable law.

25 d. The direct and indirect costs of personnel, equipment, operating
26 expenses, and activities of the division shall be funded solely through
27 permit fees for permits issued in the smart growth areas. The
28 department shall, in consultation with the ombudsman, establish permit
29 fees necessary for the department to administer and enforce the
30 program. The fee schedule established pursuant to this subsection
31 shall include the department's pro rata share of the budget of the Smart
32 Growth Ombudsman. Within 30 days after the date of enactment of
33 P.L. , c. (C.) (pending before the Legislature as this bill), the
34 department, in consultation with the ombudsman, shall publish a
35 schedule of permit fees in the New Jersey Register and may amend the
36 fee schedule as necessary. The fee schedule may provide for increased
37 fees for complex projects.

38 e. (1) The Director of the Division of Smart Growth shall, within
39 120 days after the date of enactment of P.L. , c. (C.)
40 (pending before the Legislature as this bill), develop a program for the
41 qualification and registration of professionals who shall certify that a
42 permit application is complete and that the statutory and regulatory
43 requirements for the permit have been met by the applicant. The
44 requirements for qualification and registration may include, but shall
45 not be limited to, professional licensure relevant to the subject matter
46 of the permit, a review of projects undertaken by the professional

1 applying for qualification and registration, and a review of the nature
2 of the professional's services provided on each project.

3 (2) The director shall include in the program for the qualification
4 and registration of professionals any standards or requirements
5 necessary for proper administration and enforcement of the provisions
6 of P.L. , c. (C.) (pending before the Legislature as this
7 bill), and shall provide for the suspension or revocation of the
8 qualification and registration of professionals as provided in this
9 subsection.

10 (3) Any person who negligently violates any requirement of the
11 program established by the department for the qualification and
12 registration of professionals may lose professional licensure for one
13 year, may be barred from qualification and registration for a period of
14 three years, and the firm with which that individual is associated may
15 be barred from seeking qualification and registration for a period of
16 three years.

17 (4) If a person willfully or recklessly violates any requirement of
18 the program established by the department for the qualification and
19 registration of professionals, that individual shall lose professional
20 licensure for one year, shall be permanently barred from qualification
21 and registration, and the firm with which that individual is associated
22 shall be permanently barred from seeking qualification and registration.

23 (5) Prior to any suspension, revocation, or failure to renew a
24 person's qualification and registration, the department shall afford the
25 person or firm an opportunity for a hearing in accordance with the
26 provisions of the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.), except that, if the department has reason to
28 believe that a condition exists which poses an imminent threat to the
29 public health, safety or welfare, it may order the immediate suspension
30 of qualification and registration pending the outcome of the hearing.

31 f. The director, after consultation with the Smart Growth
32 Ombudsman, may adopt rules and regulations in accordance with the
33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
34 as appropriate to implement the requirements of this section and to
35 encourage development in the smart growth areas.

36 g. Nothing in this section shall be construed or implemented in
37 such a way as to modify any requirement of law that is necessary to
38 retain federal delegation to, or assumption by, the State of the
39 authority to implement a federal law or program.

40 h. Applications for an expedited permit application review
41 pursuant to subsection c. of this section shall not be accepted until 120
42 days following the date of enactment of P.L. , c. (C.) (pending
43 before the Legislature as this bill). Applications pending on the date
44 of enactment of P.L. , c. (C.) (pending before the Legislature
45 as this bill) shall, upon request of the applicant, be processed in the
46 expedited permit application review program when it becomes

1 effective. A permit application that is the subject of a request under
2 this provision shall be transferred to the Division of Smart Growth for
3 processing in accordance with P.L. , c. (C.) (pending before
4 the Legislature as this bill).

5
6 8. As used in section 9 of P.L. , c. (C.) (pending before
7 the Legislature as this bill):

8 "Applicant" means any person applying for a permit pursuant to
9 section 9 of P.L. , c. (C.) (pending before the Legislature
10 as this bill);

11 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
12 Growth Ombudsman appointed by the Governor pursuant to section
13 2 of P.L. , c. (C.) (pending before the Legislature as this
14 bill);

15 "Permit" means any permit or approval required as a condition of
16 development or redevelopment and issued by the Department of
17 Community Affairs pursuant to any law or any rule or regulation
18 adopted pursuant thereto;

19 "Person" means any individual, corporation, company, partnership,
20 firm, association, owner or operator of a treatment works, political
21 subdivision of this State, or State or interstate agency; and

22 "Smart growth area" means an area designated pursuant to
23 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
24 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
25 a designated growth center in an endorsed plan; a smart growth area
26 and planning area designated in a master plan adopted by the New
27 Jersey Meadowlands Commission pursuant to subsection (i) of section
28 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
29 comprehensive management plan prepared and adopted by the
30 Pinelands Commission pursuant to section 7 of the "Pinelands
31 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
32 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
33 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
34 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
35 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
36 Community Affairs; or similar areas designated by the Department of
37 Environmental Protection.

38
39 9. a. There is established in the Department of Community Affairs
40 a Division of Smart Growth under the direction of a director, who
41 shall be appointed by the Governor and report to the Commissioner of
42 Community Affairs. The director shall review and take action on
43 permits for which the applicant has requested expedited review
44 pursuant to this section.

45 b. The director shall coordinate and expedite the review of permits
46 issued by the division with the Smart Growth Ombudsman appointed

1 pursuant to section 2 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3 c. (1) An applicant may request an expedited permit application
4 review for a proposed project in a smart growth area. In order to
5 qualify for expedited permit application review pursuant to this
6 section, an applicant shall include with a permit application all
7 necessary documentation, a request for expedited permit application
8 review, and the permit fee established in accordance with subsection
9 d. of this section. The permit application shall be signed by the
10 applicant and by a professional qualified and registered in accordance
11 with subsection e. of this section, certifying that a permit application
12 is complete and that the statutory and regulatory requirements for the
13 permit have been met by the applicant. A copy of the application and
14 the request shall also be submitted to the ombudsman and to the clerk
15 of the municipality and the clerk of the county in which the proposed
16 project is located. A permit application that qualifies for expedited
17 permit application review pursuant to this section shall be subject to
18 the following time frames:

19 (a) the division shall notify an applicant within 20 days after the
20 filing date if the permit application lacks a submission identified on a
21 checklist therefor, or a submission has not been completed. If an
22 application, including the permit fee and all necessary documentation,
23 is determined to be complete or if a notice of incompleteness is not
24 provided within 20 days after the filing of the application, the
25 application shall be deemed complete for purposes of commencing a
26 technical review;

27 (b) the division shall notify an applicant if the permit application is
28 technically complete or issue a notice of deficiency within 45 days
29 after the filing of the application. If an application is determined to be
30 technically complete, or if a notice of deficiency is not issued within
31 45 days after the filing of the application, the application shall be
32 deemed technically complete. A notice of deficiency shall itemize all
33 deficiencies that must be addressed in order for the application to be
34 determined technically complete. A notice of deficiency shall be
35 deemed exclusive and further review for technical completeness shall
36 be limited to the items so identified;

37 (c) the division shall take action on a technically complete permit
38 application within 45 days, except that this time period may be
39 extended for a 30-day period by the mutual consent of the applicant
40 and the department. In the event that the department fails to take
41 action on an application for a permit within the 45-day period specified
42 herein, then the application shall be deemed to have been approved;
43 and

44 (d) if more than one notice of deficiency is issued by the division,
45 the applicant may request an expedited hearing in accordance with
46 section 14 of P.L. , c. (C.) (pending before the Legislature

1 as this bill) to determine whether the application is technically
2 complete.

3 (2) Nothing in this subsection shall supersede shorter periods for
4 department action provided by applicable law.

5 d. The direct and indirect costs of personnel, equipment, operating
6 expenses, and activities of the division shall be funded solely through
7 permit fees for permits issued in the smart growth areas. The
8 department shall, in consultation with the ombudsman, establish permit
9 fees necessary for the department to administer and enforce the
10 program. The fee schedule established pursuant to this subsection
11 shall include the department's pro rata share of the budget of the Smart
12 Growth Ombudsman. Within 30 days after the date of enactment of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 the department, in consultation with the ombudsman, shall publish a
15 schedule of permit fees in the New Jersey Register and may amend the
16 fee schedule as necessary. The fee schedule may provide for increased
17 fees for complex projects.

18 e. (1) The Director of the Division of Smart Growth shall, within
19 120 days after the date of enactment of P.L. , c. (C.)
20 (pending before the Legislature as this bill), develop a program for the
21 qualification and registration of professionals who shall certify that a
22 permit application is complete and that the statutory and regulatory
23 requirements for the permit have been met by the applicant. The
24 requirements for qualification and registration may include, but shall
25 not be limited to, professional licensure relevant to the subject matter
26 of the permit, a review of projects undertaken by the professional
27 applying for qualification and registration, and a review of the nature
28 of the professional's services provided on each project.

29 (2) The director shall include in the program for the qualification
30 and registration of professionals any standards or requirements
31 necessary for proper administration and enforcement of the provisions
32 of P.L. , c. (C.) (pending before the Legislature as this
33 bill), and shall provide for the suspension or revocation of the
34 qualification and registration of professionals as provided in this
35 subsection.

36 (3) Any person who negligently violates any requirement of the
37 program established by the department for the qualification and
38 registration of professionals may lose professional licensure for one
39 year, may be barred from qualification and registration for a period of
40 three years, and the firm with which that individual is associated may
41 be barred from seeking qualification and registration for a period of
42 three years.

43 (4) If a person willfully or recklessly violates any requirement of
44 the program established by the department for the qualification and
45 registration of professionals, that individual shall lose professional
46 licensure for one year, shall be permanently barred from qualification

1 and registration, and the firm with which that individual is associated
2 shall be permanently barred from seeking qualification and registration.

3 (5) Prior to any suspension, revocation, or failure to renew a
4 person's qualification and registration, the department shall afford the
5 person or firm an opportunity for a hearing in accordance with the
6 provisions of the "Administrative Procedure Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), except that, if the department has reason to
8 believe that a condition exists which poses an imminent threat to the
9 public health, safety or welfare, it may order the immediate suspension
10 of qualification and registration pending the outcome of the hearing.

11 f. The director, after consultation with the Smart Growth
12 Ombudsman, may adopt rules and regulations in accordance with the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
14 as appropriate to implement the requirements of this section and to
15 encourage development in the smart growth areas.

16 g. Nothing in this section shall be construed or implemented in
17 such a way as to modify any requirement of law that is necessary to
18 retain federal delegation to, or assumption by, the State of the
19 authority to implement a federal law or program.

20 h. Applications for an expedited permit application review
21 pursuant to subsection c. of this section shall not be accepted until 120
22 days following the date of enactment of P.L. , c. (C.) (pending
23 before the Legislature as this bill). Applications pending on the date
24 of enactment of P.L. , c. (C.) (pending before the Legislature
25 as this bill) shall, upon request of the applicant, be processed in the
26 expedited permit application review program when it becomes
27 effective. A permit application that is the subject of a request under
28 this provision shall be transferred to the Division of Smart Growth for
29 processing in accordance with P.L. , c. (C.) (pending
30 before the Legislature as this bill).

31

32 10. a. In addition to the provisions of subsection c. of section 5,
33 subsection c. of section 7 and subsection c. of section 9 of P.L. ,
34 c. (C.) (pending before the Legislature as this bill), expedited
35 permit mechanisms, such as a permits-by-rule, general permits, and
36 certification by professionals qualified and registered in accordance
37 with subsection e. of section 5, subsection e. of section 7 or subsection
38 e. of section 9 of P.L. , c. (C.) (pending before the Legislature
39 as this bill), as appropriate, shall be made available in the smart growth
40 areas as determined appropriate by the Commissioner of
41 Environmental Protection, the Commissioner of Transportation, or the
42 Commissioner of Community Affairs, as appropriate, after consultation
43 with the Smart Growth Ombudsman.

44 b. The following permits or approvals in smart growth areas shall
45 be by permit-by-rule upon certification of compliance with statutory
46 and regulatory requirements by a professional qualified and registered

1 in accordance with subsection e. of section 5 of P.L. , c. (C.)
2 (pending before the Legislature as this bill):

3 (1) treatment works approvals pursuant to section 6 of P.L.1977,
4 c.74 (C.58:10A-6) for sewer lines, pumping stations, force mains or
5 service connections in sewer service areas;

6 (2) water quality management plan amendments adopted pursuant
7 to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et
8 seq.) for new or expanded sewer service areas associated with an
9 existing wastewater treatment facility;

10 (3) water main extension permits pursuant to the "Safe Drinking
11 Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.) where a public
12 water system has available, uncommitted resources;

13 (4) well drilling permits pursuant to section 10 of P.L.1947, c.377
14 (C.58:4A-14); and

15 (5) the following general permits issued by the Department of
16 Environmental Protection for activities in the waterfront development
17 area designated pursuant to R.S.12:5-3 and in accordance with rules
18 and regulations in effect on June 14, 2004:

19 (a) the landfall of utilities including cable, including electric,
20 television and fiber optics, telecommunication, petroleum, natural gas,
21 water and sanitary sewer lines constructed in tidal water bodies
22 authorized pursuant to R.S.12:5-1 et seq. or the "Flood Hazard Area
23 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.);

24 (b) minor maintenance dredging in man-made lagoons; and

25 (c) the voluntary reconstruction of a non-damaged legally
26 constructed, currently habitable residential or commercial development
27 landward of the existing footprint of development.

28 c. The Director of the Division of Smart Growth established in the
29 Department of Environmental Protection pursuant to subsection a. of
30 section 5 of P.L. , c. (C.) (pending before the Legislature as
31 this bill) shall take action on the following wetlands general permits
32 issued by the Department of Environmental Protection pursuant to the
33 Freshwater Wetlands Protection Act Rules adopted under the
34 authority of the "Freshwater Wetlands Protection Act," P.L.1987,
35 c.156 (C.13:9B-1 et seq.) and in effect on June 14, 2004, provided the
36 application includes an effective letter of interpretation issued by the
37 department pursuant to section 8 of P.L.1987, c.156 (C.13:9B-8), in
38 smart growth areas within 45 days upon certification of compliance
39 with statutory and regulatory requirements by a professional qualified
40 and registered in accordance with subsection e. of section 5 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill):

42 (1) regulated activities in freshwater wetlands, transition areas, or
43 State open waters, necessary for the construction or maintenance of
44 an underground utility line provided that any permanent above-ground
45 disturbance of wetlands, transition area, or State open waters shall be
46 no greater than one acre;

1 (2) a regulated activity in a freshwater wetland, transition area, or
2 State open water, if the freshwater wetland or State open water is not
3 part of a surface water tributary system discharging into an inland lake
4 or pond, or a river or stream, and provided the activity shall disturb no
5 more than one-half acre of a freshwater wetland, transition area, or
6 State open water up to one-half acre;

7 (3) minor road crossings, including attendant features such as
8 shoulders, sidewalks and embankments, provided that the total area
9 of disturbance shall not exceed one-quarter acre of freshwater
10 wetland, transition area, and State open water, without regard to the
11 distance or length of road, to access developable uplands;

12 (4) regulated activities in freshwater wetlands, transition areas, or
13 State open waters, necessary to stabilize the bank of a water body in
14 order to reduce or prevent erosion through bioengineering methods;

15 (5) regulated activities in freshwater wetlands, transition areas, or
16 State open waters, necessary for the construction of an above ground
17 utility line;

18 (6) the disturbance of certain degraded freshwater wetlands,
19 transition areas, or State open waters necessary for redevelopment of
20 an area previously significantly disturbed by industrial or commercial
21 activities provided that the disturbance shall not exceed one-tenth acre
22 of freshwater wetlands and one-quarter acre total disturbance
23 including transition areas;

24 (7) regulated activities in freshwater wetlands or transition areas,
25 necessary for the construction of additions or appurtenant
26 improvements to residential dwellings lawfully existing prior to July 1,
27 1988, provided that the improvements or additions require less than a
28 cumulative surface area of 750 square feet of fill or disturbance and
29 shall not result in new alterations to a freshwater wetland outside of
30 the 750 square foot area;

31 (8) regulated activities in freshwater wetlands, transition areas and
32 State open waters necessary for surveying and investigative activities,
33 including: soil borings dug by machine; hand dug soil borings larger
34 than three feet in diameter or depth; cutting of vegetation by machine
35 for a survey line; cutting of vegetation by hand for a survey line; and
36 digging of exploratory pits and other temporary activities necessary for
37 a geotechnical or archaeological investigation; and

38 (9) regulated activities in freshwater wetlands and transition areas
39 necessary for the repair or modification of a malfunctioning individual
40 subsurface sewage disposal system provided that the activity shall
41 disturb no more than one-quarter acre of freshwater wetlands or
42 transition areas combined.

43 d. The Director of the Division of Smart Growth established in the
44 Department of Environmental Protection pursuant to subsection a. of
45 section 5 of P.L. , c. (C.) (pending before the Legislature
46 as this bill) shall take action on minor stream encroachment permits for

1 an encroachment project that does not require hydrologic or hydraulic
2 review; does not require review of any stormwater detention basin;
3 does not increase potential for erosion or sedimentation in stream and
4 does not require substantial channel modification or relocation; and
5 does not need to be reviewed for the zero percent or 20 percent net fill
6 limitations other than that associated with a single family dwelling, in
7 smart growth areas within 30 days upon certification of compliance
8 with statutory and regulatory requirements by a professional qualified
9 and registered in accordance with subsection e. of section 5 of P.L. ,
10 c. (C.) (pending before the Legislature as this bill).

11 e. The following Highway Occupancy permits or approvals in
12 smart growth areas shall be by permit-by-rule upon certification of
13 compliance with statutory and regulatory requirements by a
14 professional qualified and registered in accordance with subsection e.
15 of section 7 of P.L. , c. (C.) (pending before the Legislature
16 as this bill):

- 17 (1) drainage;
- 18 (2) utility openings; and
- 19 (3) utility poles (new and relocation).

20 f. Notwithstanding the provisions P.L.1987, c.156 (C.13:9B-1 et
21 seq.), or any rule or regulation adopted pursuant thereto, to the
22 contrary, an activity conducted under the authority of a general permit
23 issued by the Department of Environmental Protection pursuant to
24 section 23 of P.L.1987, c.156 (C.13:9B-23) may occur in a vernal
25 habitat located within a smart growth area or in a transition area
26 adjacent to a vernal habitat located within a smart growth area.

27 g. A copy of the application for a general permit or a notice of the
28 permit by rule provided pursuant to this section shall be submitted to
29 the ombudsman and to the clerk of the municipality and the clerk of
30 the county in which the proposed project is located.

31 h. Nothing in this section shall be construed or implemented in
32 such a way as to modify any requirement of law that is necessary to
33 retain federal delegation to, or assumption by, the State of the
34 authority to implement a federal law or program.

35
36 11. As used in sections 12 through 18 of P.L. , c. (C.)
37 (pending before the Legislature as this bill):

38 "Applicant" means any person applying for a permit pursuant to
39 sections 3, 5, 7, 9 or 10 of P.L. , c. (C.) (pending before the
40 Legislature as this bill);

41 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
42 Growth Ombudsman appointed by the Governor pursuant to section
43 2 of P.L. , c. (C.) (pending before the Legislature as this
44 bill);

45 "Permit" means any permit or approval issued by the Department
46 of Environmental Protection, pursuant to any law, or any rule or

1 regulation adopted pursuant thereto, provided that "permit" shall not
2 include any approval of a grant, or a permit issued pursuant to the
3 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
4 seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212
5 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970,
6 c.39 (C.13:1E-1 et seq), or the "Radiation Protection Act," P.L.1958,
7 c.116 (C.26:2D-1 et seq.), any permit or approval issued by the
8 Department of Transportation pursuant to any law, or any rule or
9 regulation adopted pursuant thereto, or any permit or approval
10 required as a condition of development or redevelopment issued by the
11 Department of Community Affairs pursuant to any law or any rule or
12 regulation adopted pursuant thereto;

13 "Person" means any individual, corporation, company, partnership,
14 firm, association, owner or operator of a treatment works, political
15 subdivision of this State, or State or interstate agency; and

16 "Smart growth area" means an area designated pursuant to
17 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
18 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
19 a designated growth center in an endorsed plan; a smart growth area
20 and planning area designated in a master plan adopted by the New
21 Jersey Meadowlands Commission pursuant to subsection (i) of section
22 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
23 comprehensive management plan prepared and adopted by the
24 Pinelands Commission pursuant to section 7 of the "Pinelands
25 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
26 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
27 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
28 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
29 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
30 Community Affairs; or similar areas designated by the Department of
31 Environmental Protection.

32

33 12. Upon the request of the applicant and in accordance with
34 sections 14, 15, and 16 of P.L. , c. (C.) (pending before the
35 Legislature as this bill), the Office of Administrative Law shall provide
36 for the expedited appeal of any contested permit action for a proposed
37 project in a smart growth area. An applicant who does not exercise
38 this option retains the right to an administrative hearing and decision
39 on the permit application pursuant to the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

41

42 13. a. There is hereby established within the Office of
43 Administrative Law a Smart Growth Unit consisting of administrative
44 law judges having expertise in the matters heard pursuant to this
45 section. All cases transmitted to the Office of Administrative Law
46 pursuant to this section shall be assigned to and adjudicated by the

1 administrative law judges in the Smart Growth Unit.

2 b. The Governor with the advice and consent of the Senate shall
3 appoint administrative law judges to the Smart Growth Unit.
4 Administrative law judges appointed to the Smart Growth Unit shall
5 have expertise in the relevant subject areas pertaining to P.L. , c.
6 (C.) (pending before the Legislature as this bill) and shall be
7 subject to the terms of appointment and employment set forth in
8 sections 4 and 5 of P.L.1978, c.67 (C.52:14F-4) and (C.52:14F-5).
9 The Director of the Office of Administrative Law and Chief
10 Administrative Law Judge shall assign an administrative law judge as
11 the assignment judge for the unit.

12

13 14. a. Within 15 days after the receipt by the Division of Smart
14 Growth of notice of an applicant's request for an expedited review
15 pursuant to subparagraph (d) of paragraph (1) of subsection c. of
16 section 5, subparagraph (d) of paragraph (1) of subsection c. of
17 section 7, or subparagraph (d) of paragraph (1) of subsection c. of
18 section 9 of P.L. , c. (C.) (pending before the Legislature
19 as this bill), as appropriate, the Division of Smart Growth shall
20 transmit to the clerk of the Office of Administrative Law the
21 administrative record which shall consist of:

22 (1) the request for an expedited review of the application;

23 (2) the application;

24 (3) documents the applicant filed in support of the application;

25 (4) the qualified and registered professional's certification that the
26 application is complete and meets all statutory and regulatory
27 requirements for approval;

28 (5) the Division of Smart Growth's notices of deficiency, if any,
29 that the application is incomplete;

30 (6) the Division of Smart Growth's documentation, if any, in
31 support of its determination that the application is incomplete; and

32 (7) the applicant's request for an expedited hearing.

33 b. The case shall be assigned to an administrative law judge who
34 shall be a member of the Smart Growth Unit. Within 15 days after the
35 filing of the case with the clerk of the Office of Administrative Law,
36 the parties shall file briefs with the administrative law judge. There
37 shall be no presumptions in favor of either party. No other evidence
38 shall be admitted or relied upon, except by consent of the parties and
39 with approval of the administrative law judge. Discovery shall not be
40 available, except by consent of the parties. The standard of review
41 shall be by the preponderance of the evidence.

42 c. Within 30 days after the date of submission of the briefs, the
43 administrative law judge shall issue a written decision as to whether
44 the application is complete. The time limits established herein shall
45 not be extended except by consent of the parties.

46 d. If the administrative law judge decides that the application is

1 complete, the Director of the Division of Smart Growth shall take
2 action to approve, approve with conditions or deny the permit
3 application within 45 days after the receipt of the decision.

4 e. The decision of the administrative law judge on the issue of
5 completeness of the application shall be the final decision binding on
6 the parties and shall not be subject to further review or appeal by
7 either the Division of Smart Growth established pursuant to sections
8 5, 7 or 9 of P.L. , c. (C.) (pending before the Legislature as
9 this bill), as appropriate, or the applicant.

10 f. An applicant who does not request an expedited review
11 pursuant to subparagraph (d) of paragraph (1) of subsection c. of
12 section 5, subparagraph (d) of paragraph (1) of subsection c. of
13 section 7 or subparagraph (d) of paragraph (1) of subsection c. of
14 section 9 of P.L. , c. (C.) (pending before the Legislature
15 as this bill), as appropriate, retains the right to an administrative
16 hearing and decision on the permit application pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.).

19

20 15. a. If an application for a permit for a proposed project in a
21 smart growth area is denied, the Office of Administrative Law shall
22 provide an expedited hearing to review the denial of the permit upon
23 the request of the applicant. An applicant who does not request a
24 hearing pursuant to this section retains the right to an administrative
25 hearing and decision on the permit application pursuant to the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.).

28 b. Within 15 days after receipt by the Division of Smart Growth
29 of notice of an applicant's request for an expedited hearing, the
30 division shall transmit to the clerk of the Office of Administrative Law
31 the administrative record which shall consist of:

32 (1) the application;

33 (2) documents the applicant filed in support of the application;

34 (3) the qualified and registered professional's certification that the
35 application is complete and meets all statutory and regulatory
36 requirements for approval;

37 (4) the Division of Smart Growth's notices of deficiency, if any,
38 that the application is incomplete;

39 (5) the Division of Smart Growth's documentation, if any, in
40 support of its determination to deny the application; and

41 (6) the applicant's request for an expedited hearing and decision.

42 c. The case shall be assigned to an administrative law judge who
43 shall be a member of the Smart Growth Unit. The administrative law
44 judge shall establish an expedited briefing and hearing schedule. Any
45 hearings shall be concluded within 45 days after receipt of the case by
46 the administrative law judge.

1 d. Nothing herein shall diminish the applicant's obligation to prove
2 in the application process that it satisfies standards for approval of an
3 application. There shall be no presumptions in favor of either party as
4 to the underlying permit decision. The standard of review shall be by
5 the preponderance of the evidence.

6 e. Within 45 days after the closing of the record, the
7 administrative law judge shall issue a written decision as to whether
8 the applicant has satisfied the standards required for the permit. The
9 time limits established herein shall not be extended except by consent
10 of the parties and the administrative law judge.

11 f. If the administrative law judge decides that the application
12 should be approved, the Director of the Division of Smart Growth
13 shall take action to approve or approve with conditions the permit
14 within 10 days after receipt of the decision.

15 g. The decision of the administrative law judge shall be the final
16 decision binding on the parties and shall not be subject to further
17 review or appeal by either the Division of Smart Growth established
18 pursuant to sections 5, 7 or 9 of P.L. , c. (C.) (pending
19 before the Legislature as this bill), as appropriate, or the applicant.
20

21 16. a. If an application for a permit for a proposed project in a
22 smart growth area is approved by the Division of Smart Growth with
23 terms or conditions, the Office of Administrative Law shall provide an
24 expedited hearing and decision on any terms or conditions of such
25 permit upon the request of the applicant. An applicant who does not
26 request an expedited hearing pursuant to this section retains the right
27 to an administrative hearing and decision on the permit application
28 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
29 (C.52:14B-1 et seq.).

30 b. Within 15 days after receipt by the agency of notice of an
31 applicant's request for an expedited hearing and decision, the Division
32 of Smart Growth shall transmit to the clerk of the Office of
33 Administrative Law the case record which shall consist of:

34 (1) the application;

35 (2) documents the applicant filed in support of the application;

36 (3) the qualified and registered professional's certification that the
37 application is complete and meets all statutory and regulatory
38 requirements for approval;

39 (4) the Division of Smart Growth's notices of deficiency, if any,
40 that the application is incomplete;

41 (5) the Division of Smart Growth's documentation, if any, in
42 support of its determination to include the terms or conditions that are
43 being contested; and

44 (6) the applicant's request for an expedited hearing and decision.

45 c. The case shall be assigned to an administrative law judge who
46 shall be a member of the Smart Growth Unit. The administrative law

1 judge shall establish an expedited briefing and hearing schedule. Any
2 hearings shall be concluded within 45 days after receipt of the case by
3 the administrative law judge.

4 d. Nothing herein shall diminish the applicant's obligation to prove
5 in the application process that it satisfies standards for approval of an
6 application. There shall be no presumptions in favor of either party as
7 to the underlying permit decision. The standard of review shall be by
8 the preponderance of the evidence.

9 e. Within 45 days after the closing of the record, the
10 administrative law judge shall issue a written decision as to whether
11 the applicant has satisfied the standards required for the permit. The
12 time limits established herein shall not be extended except by consent
13 of the parties and the Administrative Law Judge.

14 f. If the administrative law judge decides that a permit term or
15 condition should be deleted or amended, the Director of the Division
16 of Smart Growth shall take action to revise the terms or conditions of
17 the permit within 10 days after receipt of the decision.

18 g. The decision of the administrative law judge shall be the final
19 decision binding on the parties and shall not be subject to further
20 review or appeal by either the Division of Smart Growth established
21 pursuant to sections 5, 7 or 9 of P.L. , c. (C.) (pending
22 before the Legislature as this bill), as appropriate, or the applicant.

23

24 17. The Office of Administrative Law shall have authority to
25 establish filing fees, payable by the applicant, necessary to administer
26 the Smart Growth Unit, including the direct and indirect costs for
27 personnel, operating expenses, equipment and activities of the Smart
28 Growth Unit. These filing fees shall be published in the New Jersey
29 Register and shall be effective upon publication therein.

30

31 18. The Office of Administrative Law may adopt those rules and
32 regulations that it deems necessary to carry out the requirements of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 which shall be effective upon filing.

35

36 19. Nothing in this act shall be construed to apply to, or affect in
37 any way, the preservation area of the Highlands Region as defined
38 pursuant to P.L.2004, c. (C.) (now in the Legislature as Senate
39 Bill No. 1), or the authority of any State department or agency to
40 adopt any rules and regulations for the preservation area.

41

42 20. This act shall take effect immediately.