

# 13:20-13

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2010                    **CHAPTER:** 7

**NJSA:** 13:20-13 (Authorizes any municipality outside Highlands Region to establish receiving zones for Highlands transfer of development rights program)

**BILL NO:** A602 (Substituted for S80)

**SPONSOR(S)** Peterson and Others

**DATE INTRODUCED:** January 12, 2010

**COMMITTEE: ASSEMBLY:** Environment and Solid Waste

**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE: ASSEMBLY:** February 25, 2010

**SENATE:** March 11, 2010

**DATE OF APPROVAL:** May 5, 2010

### FOLLOWING ARE ATTACHED IF AVAILABLE:

#### FINAL TEXT OF BILL (First reprint enacted)

#### A602

**SPONSOR'S STATEMENT:** (Begins on page 6 of introduced bill) Yes

**COMMITTEE STATEMENT: ASSEMBLY:** Yes

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** No

#### S80

**SPONSOR'S STATEMENT:** (Begins on page 6 of introduced bill) Yes

**COMMITTEE STATEMENT: ASSEMBLY:** No

**SENATE:** Yes

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** No

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

LAW/KR

[First Reprint]

**ASSEMBLY, No. 602**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Assemblyman ERIK PETERSON**  
**District 23 (Warren and Hunterdon)**  
**Assemblyman JOHN F. MCKEON**  
**District 27 (Essex)**

**Co-Sponsored by:**

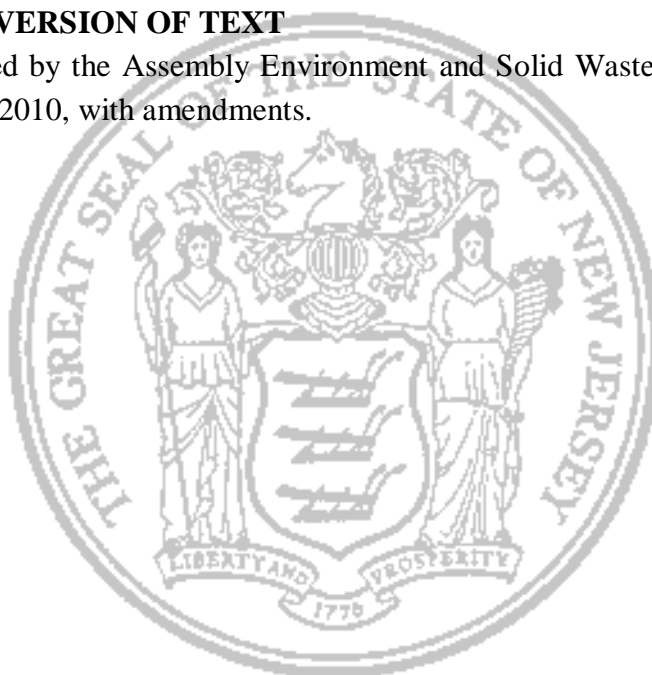
**Assemblyman Gusciora, Senators B.Smith, Bateman, Gordon, Beck and Beach**

**SYNOPSIS**

Authorizes any municipality outside Highlands Region to establish receiving zones for Highlands transfer of development rights program.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on February 18, 2010, with amendments.



**(Sponsorship Updated As Of: 3/12/2010)**

1 AN ACT concerning the Highlands transfer of development rights  
2 program and amending P.L.2004, c.120.

3

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

6

7 1. Section 13 of P.L.2004, c.120 (C.13:20-13) is amended to  
8 read as follows:

9 13. a. The council shall use the regional master plan elements  
10 prepared pursuant to sections 11 and 12 of this act, including the  
11 resource assessment and the smart growth component, to establish a  
12 transfer of development rights program for the Highlands Region  
13 that furthers the goals of the regional master plan. The transfer of  
14 development rights program shall be consistent with the "State  
15 Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137  
16 et seq.) or any applicable transfer of development rights program  
17 created otherwise by law, except as otherwise provided in this  
18 section.

19 b. In consultation with municipal, county, and State entities,  
20 the council shall, within 18 months after the date of enactment of  
21 this act, and from time to time thereafter as may be appropriate,  
22 identify areas within the preservation area that are appropriate as  
23 sending zones pursuant to P.L.2004, c.2 (C.40:55D-137 et seq.).

24 c. In consultation with municipal, county, and State entities,  
25 the council shall, within 18 months after the date of enactment of  
26 this act, and from time to time thereafter as may be appropriate,  
27 identify areas within the planning area that are appropriate for  
28 development as voluntary receiving zones pursuant to P.L.2004, c.2  
29 (C.40:55D-137 et seq.) considering the information gathered  
30 pursuant to sections 11 and 12 of this act, including but not limited  
31 to the information gathered on the transfer of development rights  
32 pursuant to paragraph (6) of subsection a. of section 11 of this act.  
33 For the purposes of the council establishing a transfer of  
34 development rights program prior to the preparation of the initial  
35 regional master plan, the council in identifying areas appropriate for  
36 development as voluntary receiving zones shall consider such  
37 information as may be gathered pursuant to sections 11 and 12 of  
38 this act and as may be available at the time, but the council need not  
39 delay the creation of the transfer of development rights program  
40 until the initial regional master plan has been prepared. **[**The  
41 council shall set a goal of identifying areas within the planning area  
42 that are appropriate for development as voluntary receiving zones  
43 that, combined together, constitute four percent of the land area of  
44 the planning area, to the extent that the goal is compatible with the

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted February 18, 2010.

1 amount and type of human development and activity that would not  
2 compromise the integrity of the ecosystem of the planning area.】  
3 ‘The council shall set a goal of identifying areas within the  
4 planning area that are appropriate for development as voluntary  
5 receiving zones that, combined together, constitute four percent of  
6 the land area of the planning area, to the extent that the goal is  
7 compatible with the amount and type of human development and  
8 activity that would not compromise the integrity of the ecosystem  
9 of the planning area.<sup>1</sup>

10 d. The council shall work with municipalities and the State  
11 Planning Commission to identify centers, designated by the State  
12 Planning Commission, as voluntary receiving zones for the transfer  
13 of development rights program.

14 e. In consultation with municipal, county, and State entities,  
15 the council shall assist municipalities or counties in analyzing  
16 voluntary receiving zone capacity.

17 f. In consultation with municipal, county, and State entities,  
18 the council shall work with municipalities outside of the  
19 preservation area to assist these municipalities in developing  
20 ordinances necessary to implement the transfer of development  
21 rights. The council shall also establish advisory or model  
22 ordinances and other information for this purpose.

23 The council shall make assistance available to municipalities that  
24 desire to create additional sending zones on any lands within their  
25 boundaries which lie within the planning area and are designated  
26 for conservation in the regional master plan.

27 g. Notwithstanding the provisions of P.L.2004, c.2 (C.40:55D-  
28 137 et seq.) to the contrary, the council shall perform the real estate  
29 analysis for the Highlands Region that is required to be performed  
30 by a municipality prior to the adoption or amendment of any  
31 development transfer ordinance pursuant to P.L.2004, c.2.

32 h. (1) The council shall set the initial value of a development  
33 right. The Office of Green Acres in the Department of  
34 Environmental Protection and the State Agriculture Development  
35 Committee shall provide support and technical assistance to the  
36 council in the operation of the transfer of development rights  
37 program. The council shall establish the initial value of a  
38 development right considering the Department of Environmental  
39 Protection rules and regulations in effect the day before the date of  
40 enactment of this act.

41 (2) The council shall give priority consideration for inclusion in  
42 a transfer of development rights program any lands that comprise a  
43 major Highlands development that would have qualified for an  
44 exemption pursuant to paragraph (3) of subsection a. of section 30  
45 of this act but for the lack of a necessary State permit as specified in  
46 subparagraph (b) or (c), as appropriate, of paragraph (3) of  
47 subsection a. of section 30 of this act, and for which an application

1 for such a permit had been submitted to the Department of  
2 Environmental Protection and deemed by the department to be  
3 complete for review on or before March 29, 2004.

4 i. (1) The council may use the State Transfer of Development  
5 Rights Bank established pursuant to section 3 of P.L.1993, c.339  
6 (C.4:1C-51) for the purposes of facilitating the transfer of  
7 development potential in accordance with this section and the  
8 regional master plan. The council may also establish a development  
9 transfer bank for such purposes.

10 (2) At the request of the council, the Department of Banking and  
11 Insurance, the State Transfer of Developments Right Bank, the  
12 State Agriculture Development Committee, and the Pinelands  
13 Development Credit Bank shall provide technical assistance to the  
14 council in establishing and operating a development transfer bank  
15 as authorized pursuant to paragraph (1) of this subsection.

16 (3) Any bank established by the council shall operate in  
17 accordance with provisions of general law authorizing the creation  
18 of development transfer banks by municipalities and counties.

19 j. The Office of Smart Growth shall review and coordinate  
20 State infrastructure capital investment, community development and  
21 financial assistance in the planning area in furtherance of the  
22 regional master plan. Prior to the council establishing its transfer of  
23 development rights program, the Office of Smart Growth shall  
24 establish a transfer of development rights pilot program that  
25 includes Highlands Region municipalities.

26 k. Any municipality in the planning area whose municipal  
27 master plan and development regulations have been approved by the  
28 council to be in conformance with the regional master plan in  
29 accordance with section 14 or 15 of this act, and that amends its  
30 development regulations to accommodate voluntary receiving zones  
31 within its boundaries which are identified pursuant to subsection c.  
32 of this section and which provide for a minimum residential density  
33 of five dwelling units per acre, shall, for those receiving zones, be:  
34 eligible for an enhanced planning grant from the council of up to  
35 \$250,000; eligible for a grant to reimburse the reasonable costs of  
36 amending the municipal development regulations; authorized to  
37 impose impact fees in accordance with subsection m. of this  
38 section; entitled to legal representation pursuant to section 22 of  
39 this act; accorded priority status in the Highlands Region for any  
40 State capital or infrastructure programs; and eligible for any other  
41 appropriate assistance, incentives, or benefits provided pursuant to  
42 section 18 of this act.

43 l. Any municipality located outside of the Highlands Region  
44 **[in any county that has a municipality in the Highlands Region]**  
45 that <sup>1</sup>(1) has received plan endorsement by the State Planning  
46 Commission pursuant to the "State Planning Act," P.L.1985, c.398  
47 (C.52:18A-196 et al.), <sup>1</sup>**[that]** or the State Planning Commission, in

1 coordination with the Highlands Water Protection and Planning  
2 Council, determines has designated an appropriate project area as a  
3 receiving zone, (2)<sup>1</sup> establishes a receiving zone which provides for  
4 a minimum residential density of five dwelling units per acre for the  
5 transfer of development rights from a sending zone in the Highlands  
6 Region, and <sup>1</sup> **["that"] (3)**<sup>1</sup> accepts that transfer of development rights  
7 <sup>1</sup> shall, for those receiving zones, be eligible for the same grants,  
8 authority, and other assistance, incentives, and benefits as provided  
9 to municipalities in the planning area pursuant to subsection k. of  
10 this section except for legal representation as provided pursuant to  
11 section 22 of this act and priority status in the Highlands Region for  
12 any State capital or infrastructure programs.

13 m. (1) A municipality that is authorized to impose impact fees  
14 under subsection k. of this section shall exercise that authority by  
15 ordinance.

16 (2) Any impact fee ordinance adopted pursuant to this subsection  
17 shall include detailed standards and guidelines regarding: (a) the  
18 definition of a service unit, including specific measures of  
19 consumption, use, generation or discharge attributable to particular  
20 land uses, densities and characteristics of development; and (b) the  
21 specific purposes for which the impact fee revenues may be  
22 expended.

23 (3) An impact fee ordinance shall also include a delineation of  
24 service areas for each capital improvement whose upgrading or  
25 expansion is to be funded out of impact fee revenues, a fee schedule  
26 which clearly sets forth the amount of the fee to be charged for each  
27 service unit, and a payment schedule.

28 (4) An impact fee may be imposed by a municipality pursuant to  
29 this subsection in order to generate revenue for funding or  
30 recouping the costs of new capital improvements or facility  
31 expansions necessitated by new development, to be paid by the  
32 developer as defined pursuant to section 3.1 of P.L.1975, c.291  
33 (C.40:55D-4). Improvements and expansions for which an impact  
34 fee is to be imposed shall bear a reasonable relationship to needs  
35 created by the new development, but in no case shall an impact fee  
36 assessed pursuant to this subsection exceed \$15,000 per dwelling  
37 unit unless and until impact fees are otherwise established by law at  
38 which time the impact fee shall be 200% of the calculated impact  
39 fee.

40 (5) No impact fee shall be assessed pursuant to this subsection  
41 against any low or moderate income housing unit within an  
42 inclusionary development as defined under P.L.1985, c.222  
43 (C.52:27D-301 et al.).

44 No impact fee authorized under this subsection shall include a  
45 contribution for any transportation improvement necessitated by a  
46 new development in a county which is covered by a transportation  
47 development district created pursuant to the "New Jersey

- 1 Transportation Development District Act of 1989," P.L.1989, c.100
- 2 (C.27:1C-1 et al.).
- 3 (cf: P.L.2004, c.120, s.13)
- 4
- 5 2. This act shall take effect immediately.



# ASSEMBLY, No. 602

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Assemblyman ERIK PETERSON**

**District 23 (Warren and Hunterdon)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**SYNOPSIS**

Authorizes any municipality outside Highlands Region to establish receiving zones for Highlands transfer of development rights program.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/16/2010)**

1 AN ACT concerning the Highlands transfer of development rights  
2 program and amending P.L.2004, c.120.

3

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

6

7 1. Section 13 of P.L.2004, c.120 (C.13:20-13) is amended to  
8 read as follows:

9 13. a. The council shall use the regional master plan elements  
10 prepared pursuant to sections 11 and 12 of this act, including the  
11 resource assessment and the smart growth component, to establish a  
12 transfer of development rights program for the Highlands Region  
13 that furthers the goals of the regional master plan. The transfer of  
14 development rights program shall be consistent with the "State  
15 Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137  
16 et seq.) or any applicable transfer of development rights program  
17 created otherwise by law, except as otherwise provided in this  
18 section.

19 b. In consultation with municipal, county, and State entities,  
20 the council shall, within 18 months after the date of enactment of  
21 this act, and from time to time thereafter as may be appropriate,  
22 identify areas within the preservation area that are appropriate as  
23 sending zones pursuant to P.L.2004, c.2 (C.40:55D-137 et seq.).

24 c. In consultation with municipal, county, and State entities,  
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26 this act, and from time to time thereafter as may be appropriate,  
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30 pursuant to sections 11 and 12 of this act, including but not limited  
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32 pursuant to paragraph (6) of subsection a. of section 11 of this act.  
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34 development rights program prior to the preparation of the initial  
35 regional master plan, the council in identifying areas appropriate for  
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38 this act and as may be available at the time, but the council need not  
39 delay the creation of the transfer of development rights program  
40 until the initial regional master plan has been prepared. **[**The  
41 council shall set a goal of identifying areas within the planning area  
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43 that, combined together, constitute four percent of the land area of  
44 the planning area, to the extent that the goal is compatible with the

**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 amount and type of human development and activity that would not  
2 compromise the integrity of the ecosystem of the planning area.】

3 d. The council shall work with municipalities and the State  
4 Planning Commission to identify centers, designated by the State  
5 Planning Commission, as voluntary receiving zones for the transfer  
6 of development rights program.

7 e. In consultation with municipal, county, and State entities,  
8 the council shall assist municipalities or counties in analyzing  
9 voluntary receiving zone capacity.

10 f. In consultation with municipal, county, and State entities,  
11 the council shall work with municipalities outside of the  
12 preservation area to assist these municipalities in developing  
13 ordinances necessary to implement the transfer of development  
14 rights. The council shall also establish advisory or model  
15 ordinances and other information for this purpose.

16 The council shall make assistance available to municipalities that  
17 desire to create additional sending zones on any lands within their  
18 boundaries which lie within the planning area and are designated  
19 for conservation in the regional master plan.

20 g. Notwithstanding the provisions of P.L.2004, c.2 (C.40:55D-  
21 137 et seq.) to the contrary, the council shall perform the real estate  
22 analysis for the Highlands Region that is required to be performed  
23 by a municipality prior to the adoption or amendment of any  
24 development transfer ordinance pursuant to P.L.2004, c.2.

25 h. (1) The council shall set the initial value of a development  
26 right. The Office of Green Acres in the Department of  
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28 Committee shall provide support and technical assistance to the  
29 council in the operation of the transfer of development rights  
30 program. The council shall establish the initial value of a  
31 development right considering the Department of Environmental  
32 Protection rules and regulations in effect the day before the date of  
33 enactment of this act.

34 (2) The council shall give priority consideration for inclusion in  
35 a transfer of development rights program any lands that comprise a  
36 major Highlands development that would have qualified for an  
37 exemption pursuant to paragraph (3) of subsection a. of section 30  
38 of this act but for the lack of a necessary State permit as specified in  
39 subparagraph (b) or (c), as appropriate, of paragraph (3) of  
40 subsection a. of section 30 of this act, and for which an application  
41 for such a permit had been submitted to the Department of  
42 Environmental Protection and deemed by the department to be  
43 complete for review on or before March 29, 2004.

44 i. (1) The council may use the State Transfer of Development  
45 Rights Bank established pursuant to section 3 of P.L.1993, c.339  
46 (C.4:1C-51) for the purposes of facilitating the transfer of

1 development potential in accordance with this section and the  
2 regional master plan. The council may also establish a development  
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4 (2) At the request of the council, the Department of Banking and  
5 Insurance, the State Transfer of Developments Right Bank, the  
6 State Agriculture Development Committee, and the Pinelands  
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11 accordance with provisions of general law authorizing the creation  
12 of development transfer banks by municipalities and counties.

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14 State infrastructure capital investment, community development and  
15 financial assistance in the planning area in furtherance of the  
16 regional master plan. Prior to the council establishing its transfer of  
17 development rights program, the Office of Smart Growth shall  
18 establish a transfer of development rights pilot program that  
19 includes Highlands Region municipalities.

20 k. Any municipality in the planning area whose municipal  
21 master plan and development regulations have been approved by the  
22 council to be in conformance with the regional master plan in  
23 accordance with section 14 or 15 of this act, and that amends its  
24 development regulations to accommodate voluntary receiving zones  
25 within its boundaries which are identified pursuant to subsection c.  
26 of this section and which provide for a minimum residential density  
27 of five dwelling units per acre, shall, for those receiving zones, be:  
28 eligible for an enhanced planning grant from the council of up to  
29 \$250,000; eligible for a grant to reimburse the reasonable costs of  
30 amending the municipal development regulations; authorized to  
31 impose impact fees in accordance with subsection m. of this  
32 section; entitled to legal representation pursuant to section 22 of  
33 this act; accorded priority status in the Highlands Region for any  
34 State capital or infrastructure programs; and eligible for any other  
35 appropriate assistance, incentives, or benefits provided pursuant to  
36 section 18 of this act.

37 l. Any municipality located outside of the Highlands Region  
38 **[in any county that has a municipality in the Highlands Region]**  
39 that has received plan endorsement by the State Planning  
40 Commission pursuant to the "State Planning Act," P.L.1985, c.398  
41 (C.52:18A-196 et al.), that establishes a receiving zone which  
42 provides for a minimum residential density of five dwelling units  
43 per acre for the transfer of development rights from a sending zone  
44 in the Highlands Region, and that accepts that transfer of  
45 development rights shall, for those receiving zones, be eligible for  
46 the same grants, authority, and other assistance, incentives, and

1 benefits as provided to municipalities in the planning area pursuant  
2 to subsection k. of this section except for legal representation as  
3 provided pursuant to section 22 of this act and priority status in the  
4 Highlands Region for any State capital or infrastructure programs.

5 m. (1) A municipality that is authorized to impose impact fees  
6 under subsection k. of this section shall exercise that authority by  
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8 (2) Any impact fee ordinance adopted pursuant to this subsection  
9 shall include detailed standards and guidelines regarding: (a) the  
10 definition of a service unit, including specific measures of  
11 consumption, use, generation or discharge attributable to particular  
12 land uses, densities and characteristics of development; and (b) the  
13 specific purposes for which the impact fee revenues may be  
14 expended.

15 (3) An impact fee ordinance shall also include a delineation of  
16 service areas for each capital improvement whose upgrading or  
17 expansion is to be funded out of impact fee revenues, a fee schedule  
18 which clearly sets forth the amount of the fee to be charged for each  
19 service unit, and a payment schedule.

20 (4) An impact fee may be imposed by a municipality pursuant to  
21 this subsection in order to generate revenue for funding or  
22 recouping the costs of new capital improvements or facility  
23 expansions necessitated by new development, to be paid by the  
24 developer as defined pursuant to section 3.1 of P.L.1975, c.291  
25 (C.40:55D-4). Improvements and expansions for which an impact  
26 fee is to be imposed shall bear a reasonable relationship to needs  
27 created by the new development, but in no case shall an impact fee  
28 assessed pursuant to this subsection exceed \$15,000 per dwelling  
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30 which time the impact fee shall be 200% of the calculated impact  
31 fee.

32 (5) No impact fee shall be assessed pursuant to this subsection  
33 against any low or moderate income housing unit within an  
34 inclusionary development as defined under P.L.1985, c.222  
35 (C.52:27D-301 et al.).

36 No impact fee authorized under this subsection shall include a  
37 contribution for any transportation improvement necessitated by a  
38 new development in a county which is covered by a transportation  
39 development district created pursuant to the "New Jersey  
40 Transportation Development District Act of 1989," P.L.1989, c.100  
41 (C.27:1C-1 et al.).

42 (cf: P.L.2004, c.120, s.13)

43

44 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill would allow municipalities anywhere in the State  
4 outside the Highlands Region (that is, not just in any county that  
5 has a municipality in the Highlands Region, as set forth in current  
6 law) to voluntarily agree to accommodate receiving zones for  
7 development pursuant to the Highlands transfer of development  
8 rights (TDR) program.

9 This bill would also delete the Highlands Water Protection and  
10 Planning Council's responsibility in the Highlands Water Protection  
11 and Planning Act to set a goal of identifying areas within the  
12 Highlands planning area that are appropriate for development as  
13 voluntary receiving zones under the Highlands TDR program that,  
14 combined together, constitute four percent of the land area of the  
15 planning area.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 602**

with committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 18, 2010

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No.602.

As amended by the committee, this bill would allow municipalities anywhere in the State outside the Highlands Region (that is, not just in any county that has a municipality in the Highlands Region, as set forth in current law) to voluntarily agree to accommodate receiving zones for development pursuant to the Highlands transfer of development rights (TDR) program.

Under current law, a municipality must have received plan endorsement under the State Planning Act to accommodate receiving zones under the program. As amended, the bill would also authorize a municipality to participate if the State Planning Commission, in coordination with the Highlands Water Protection and Planning Council, determines the municipality has designated an appropriate project area as a receiving zone.

As amended by the committee, this bill is identical to Senate Bill No.80 (SCS).

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

(1) restore the statutory language that requires the Highlands Water Protection and Planning Council to set a goal of identifying areas within the Highlands planning area that are appropriate for development as voluntary receiving zones under the Highlands TDR program that, combined together, constitute four percent of the land area of the planning area; and

(2) would authorize a municipality to participate in the TDR program if the State Planning Commission, in coordination with the Highlands Water Protection and Planning Council, determines the

municipality has designated an appropriate project area as a receiving zone.



# SENATE, No. 80

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator MICHAEL J. DOHERTY**

**District 23 (Warren and Hunterdon)**

**SYNOPSIS**

Authorizes any municipality outside Highlands Region to establish receiving zones for Highlands transfer of development rights program.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the Highlands transfer of development rights  
2 program and amending P.L.2004, c.120.

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

6

7 1. Section 13 of P.L.2004, c.120 (C.13:20-13) is amended to  
8 read as follows:

9 13. a. The council shall use the regional master plan elements  
10 prepared pursuant to sections 11 and 12 of this act, including the  
11 resource assessment and the smart growth component, to establish a  
12 transfer of development rights program for the Highlands Region  
13 that furthers the goals of the regional master plan. The transfer of  
14 development rights program shall be consistent with the "State  
15 Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137  
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18 section.

19 b. In consultation with municipal, county, and State entities,  
20 the council shall, within 18 months after the date of enactment of  
21 this act, and from time to time thereafter as may be appropriate,  
22 identify areas within the preservation area that are appropriate as  
23 sending zones pursuant to P.L.2004, c.2 (C.40:55D-137 et seq.).

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34 development rights program prior to the preparation of the initial  
35 regional master plan, the council in identifying areas appropriate for  
36 development as voluntary receiving zones shall consider such  
37 information as may be gathered pursuant to sections 11 and 12 of  
38 this act and as may be available at the time, but the council need not  
39 delay the creation of the transfer of development rights program  
40 until the initial regional master plan has been prepared. **[**The  
41 council shall set a goal of identifying areas within the planning area  
42 that are appropriate for development as voluntary receiving zones  
43 that, combined together, constitute four percent of the land area of  
44 the planning area, to the extent that the goal is compatible with the

**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 amount and type of human development and activity that would not  
2 compromise the integrity of the ecosystem of the planning area.】

3 d. The council shall work with municipalities and the State  
4 Planning Commission to identify centers, designated by the State  
5 Planning Commission, as voluntary receiving zones for the transfer  
6 of development rights program.

7 e. In consultation with municipal, county, and State entities,  
8 the council shall assist municipalities or counties in analyzing  
9 voluntary receiving zone capacity.

10 f. In consultation with municipal, county, and State entities,  
11 the council shall work with municipalities outside of the  
12 preservation area to assist these municipalities in developing  
13 ordinances necessary to implement the transfer of development  
14 rights. The council shall also establish advisory or model  
15 ordinances and other information for this purpose.

16 The council shall make assistance available to municipalities that  
17 desire to create additional sending zones on any lands within their  
18 boundaries which lie within the planning area and are designated  
19 for conservation in the regional master plan.

20 g. Notwithstanding the provisions of P.L.2004, c.2 (C.40:55D-  
21 137 et seq.) to the contrary, the council shall perform the real estate  
22 analysis for the Highlands Region that is required to be performed  
23 by a municipality prior to the adoption or amendment of any  
24 development transfer ordinance pursuant to P.L.2004, c.2.

25 h. (1) The council shall set the initial value of a development  
26 right. The Office of Green Acres in the Department of  
27 Environmental Protection and the State Agriculture Development  
28 Committee shall provide support and technical assistance to the  
29 council in the operation of the transfer of development rights  
30 program. The council shall establish the initial value of a  
31 development right considering the Department of Environmental  
32 Protection rules and regulations in effect the day before the date of  
33 enactment of this act.

34 (2) The council shall give priority consideration for inclusion in  
35 a transfer of development rights program any lands that comprise a  
36 major Highlands development that would have qualified for an  
37 exemption pursuant to paragraph (3) of subsection a. of section 30  
38 of this act but for the lack of a necessary State permit as specified in  
39 subparagraph (b) or (c), as appropriate, of paragraph (3) of  
40 subsection a. of section 30 of this act, and for which an application  
41 for such a permit had been submitted to the Department of  
42 Environmental Protection and deemed by the department to be  
43 complete for review on or before March 29, 2004.

44 i. (1) The council may use the State Transfer of Development  
45 Rights Bank established pursuant to section 3 of P.L.1993, c.339  
46 (C.4:1C-51) for the purposes of facilitating the transfer of  
47 development potential in accordance with this section and the

1 regional master plan. The council may also establish a development  
2 transfer bank for such purposes.

3 (2) At the request of the council, the Department of Banking and  
4 Insurance, the State Transfer of Developments Right Bank, the  
5 State Agriculture Development Committee, and the Pinelands  
6 Development Credit Bank shall provide technical assistance to the  
7 council in establishing and operating a development transfer bank  
8 as authorized pursuant to paragraph (1) of this subsection.

9 (3) Any bank established by the council shall operate in  
10 accordance with provisions of general law authorizing the creation  
11 of development transfer banks by municipalities and counties.

12 j. The Office of Smart Growth shall review and coordinate  
13 State infrastructure capital investment, community development and  
14 financial assistance in the planning area in furtherance of the  
15 regional master plan. Prior to the council establishing its transfer of  
16 development rights program, the Office of Smart Growth shall  
17 establish a transfer of development rights pilot program that  
18 includes Highlands Region municipalities.

19 k. Any municipality in the planning area whose municipal  
20 master plan and development regulations have been approved by the  
21 council to be in conformance with the regional master plan in  
22 accordance with section 14 or 15 of this act, and that amends its  
23 development regulations to accommodate voluntary receiving zones  
24 within its boundaries which are identified pursuant to subsection c.  
25 of this section and which provide for a minimum residential density  
26 of five dwelling units per acre, shall, for those receiving zones, be:  
27 eligible for an enhanced planning grant from the council of up to  
28 \$250,000; eligible for a grant to reimburse the reasonable costs of  
29 amending the municipal development regulations; authorized to  
30 impose impact fees in accordance with subsection m. of this  
31 section; entitled to legal representation pursuant to section 22 of  
32 this act; accorded priority status in the Highlands Region for any  
33 State capital or infrastructure programs; and eligible for any other  
34 appropriate assistance, incentives, or benefits provided pursuant to  
35 section 18 of this act.

36 l. Any municipality located outside of the Highlands Region  
37 **[in any county that has a municipality in the Highlands Region]**  
38 that has received plan endorsement by the State Planning  
39 Commission pursuant to the "State Planning Act," P.L.1985, c.398  
40 (C.52:18A-196 et al.), that establishes a receiving zone which  
41 provides for a minimum residential density of five dwelling units  
42 per acre for the transfer of development rights from a sending zone  
43 in the Highlands Region, and that accepts that transfer of  
44 development rights shall, for those receiving zones, be eligible for  
45 the same grants, authority, and other assistance, incentives, and  
46 benefits as provided to municipalities in the planning area pursuant  
47 to subsection k. of this section except for legal representation as

1 provided pursuant to section 22 of this act and priority status in the  
2 Highlands Region for any State capital or infrastructure programs.

3 m. (1) A municipality that is authorized to impose impact fees  
4 under subsection k. of this section shall exercise that authority by  
5 ordinance.

6 (2) Any impact fee ordinance adopted pursuant to this  
7 subsection shall include detailed standards and guidelines  
8 regarding: (a) the definition of a service unit, including specific  
9 measures of consumption, use, generation or discharge attributable  
10 to particular land uses, densities and characteristics of development;  
11 and (b) the specific purposes for which the impact fee revenues may  
12 be expended.

13 (3) An impact fee ordinance shall also include a delineation of  
14 service areas for each capital improvement whose upgrading or  
15 expansion is to be funded out of impact fee revenues, a fee schedule  
16 which clearly sets forth the amount of the fee to be charged for each  
17 service unit, and a payment schedule.

18 (4) An impact fee may be imposed by a municipality pursuant to  
19 this subsection in order to generate revenue for funding or  
20 recouping the costs of new capital improvements or facility  
21 expansions necessitated by new development, to be paid by the  
22 developer as defined pursuant to section 3.1 of P.L.1975, c.291  
23 (C.40:55D-4). Improvements and expansions for which an impact  
24 fee is to be imposed shall bear a reasonable relationship to needs  
25 created by the new development, but in no case shall an impact fee  
26 assessed pursuant to this subsection exceed \$15,000 per dwelling  
27 unit unless and until impact fees are otherwise established by law at  
28 which time the impact fee shall be 200% of the calculated impact  
29 fee.

30 (5) No impact fee shall be assessed pursuant to this subsection  
31 against any low or moderate income housing unit within an  
32 inclusionary development as defined under P.L.1985, c.222  
33 (C.52:27D-301 et al.).

34 No impact fee authorized under this subsection shall include a  
35 contribution for any transportation improvement necessitated by a  
36 new development in a county which is covered by a transportation  
37 development district created pursuant to the "New Jersey  
38 Transportation Development District Act of 1989," P.L.1989, c.100  
39 (C.27:1C-1 et al.).

40 (cf: P.L.2004, c.120, s.13)

41

42 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill would allow municipalities anywhere in the State  
4 outside the Highlands Region (that is, not just in any county that  
5 has a municipality in the Highlands Region, as set forth in current  
6 law) to voluntarily agree to accommodate receiving zones for  
7 development pursuant to the Highlands transfer of development  
8 rights (TDR) program.

9 This bill would also delete the Highlands Water Protection and  
10 Planning Council's responsibility in the Highlands Water Protection  
11 and Planning Act to set a goal of identifying areas within the  
12 Highlands planning area that are appropriate for development as  
13 voluntary receiving zones under the Highlands TDR program that,  
14 combined together, constitute four percent of the land area of the  
15 planning area.

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 80**

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 8, 2010

The Senate Environment and Energy Committee favorably reports a Senate Committee Substitute for Senate Bill No. 80.

This committee substitute would allow municipalities anywhere in the State outside the Highlands Region (that is, not just in any county that has a municipality in the Highlands Region, as set forth in current law) to voluntarily agree to accommodate receiving zones for development pursuant to the Highlands transfer of development rights (TDR) program.

Under current law, a municipality must have received plan endorsement under the State Planning Act to accommodate receiving zones under the program. The committee substitute would also authorize a municipality to participate if the State Planning Commission, in coordination with the Highlands Water Protection and Planning Council, determines the municipality has designated an appropriate project area as a receiving zone.