

52:27D-10.2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 89

NJSA: 52:27D-10.2 (Streamlines certain permitting in smart growth areas)

BILL NO: S1368 (Substituted for A3008)

SPONSOR(S): Sweeney and Codey

DATE INTRODUCED: March 22, 2004

COMMITTEE: **ASSEMBLY:**
SENATE: Environment

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 17, 2004

SENATE: June 17, 2004

DATE OF APPROVAL: July 9, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Senate Committee Substitute enacted

S1368

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A3008

[SPONSOR'S STATEMENT:](#) (Begins on page 26 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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<mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Governor signs bill to expedite permits," 7-10-2004 Courier-Post, p.A1

"Bill to speed eco-permits draws fire," 7-10-2004 Star-ledger, p.17

"Development permit fast-track bill signed," 7-10-2004 The Times, p.A1

"McGreevey signs bill for permits," 7-10-2004 Philadelphia Inquirer, p.B1

"McGreevey discreetly signs 'fast track' bill," 7-10-2004 Asbury Park Press, p.A3

"Environmental groups threaten to sue over growth fast-tracking," 7-10-2004 The Press, p.B5

§§1-3,8,9 -
C.52:27D-10.2
to 52:27D-10.6
§4,5,10
Title 13, Chapter 1D
Part IX Smart
Growth
C.13:1D-144
to 13:1D-146
Title 27.
Chapter 1E. (New)
§§6,7 -
C.27:1E-1 &
27:1E-2
§§11-18 -
C.52:14F-14
to 52:14F-21
§19 - C.13:1D-147
& Note to
C.13D-20-1
(reserved for
Highlands)

P.L. 2004, CHAPTER 89, *approved July 9, 2004*
Senate Committee Substitute for
Senate, No. 1368

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

1 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
2 seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212
3 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970,
4 c.39 (C.13:1E-1 et seq), or the "Radiation Protection Act," P.L.1958,
5 c.116 (C.26:2D-1 et seq.), any permit or approval issued by the
6 Department of Transportation pursuant to any law, or any rule or
7 regulation adopted pursuant thereto, or any permit or approval
8 required as a condition of development or redevelopment issued by the
9 Department of Community Affairs pursuant to any law or any rule or
10 regulation adopted pursuant thereto;

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

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

30

31 2. a. There is created in the Department of Community Affairs a
32 Smart Growth Ombudsman. The Smart Growth Ombudsman shall be
33 appointed by the Governor, serve at the pleasure of the Governor, and
34 report to the Governor.

35 b. The activities and duties of the Smart Growth Ombudsman
36 shall be funded out of revenues collected pursuant to the fee schedule
37 adopted pursuant to subsection d. of section 5, subsection d. of section
38 7 and subsection d. of section 9 of P.L. , c. (C.) (pending
39 before the Legislature as this bill) and remitted to the Smart Growth
40 Ombudsman.

41 c. The Smart Growth Ombudsman may call upon the assistance of
42 the services of those employees of any State, county or municipal
43 department, board, bureau, commission or agency as may be required
44 and as may be necessary for its purposes. In addition, the Smart
45 Growth Ombudsman may call upon any department, agency or office
46 of the State of New Jersey for such documents, materials and

1 information as it may deem necessary.

2

3 3. The Smart Growth Ombudsman shall:

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

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

18 c. at the request of an applicant, participate in the permit
19 application and review process to ensure compliance with the time
20 frames set forth in subsection c. of section 5, subsection c. of section
21 7 or subsection c. of section 9, or subsections c. and d. of section 10,
22 as the case may be, of P.L. , c. (C.) (pending before the
23 Legislature as this bill);

24 d. review any new rules or regulations proposed by any State
25 agency and determine whether the proposed rules or regulations, as
26 they pertain to the smart growth areas, are consistent with the State
27 Development and Redevelopment Plan. In the event that the Smart
28 Growth Ombudsman determines that the proposed rules or regulations
29 in the smart growth areas are not consistent with the State
30 Development and Redevelopment Plan, the Smart Growth Ombudsman
31 shall return the proposed rules or regulations to the State agency with
32 recommended amendments necessary to make the proposed rules or
33 regulations consistent with the State Development and Redevelopment
34 Plan. A State agency shall not file proposed new rules or regulations
35 for publication in the New Jersey Register unless and until the Smart
36 Growth Ombudsman determines the proposed rules or regulations in
37 the smart growth areas are consistent with the State Development and
38 Redevelopment Plan. The requirements of this section may be waived
39 upon a written determination by the Chief Counsel to the Governor
40 that the proposed rules or regulations are required to implement a
41 federal or State mandate; and

42 e. one year after the date of enactment of this act and annually
43 thereafter, prepare a report which shall be transmitted to the Governor
44 and the Legislature summarizing the activities of the ombudsman,
45 including, but not limited to, a description of the permits, permit
46 mechanisms, and permit processes that have been streamlined, a list of

1 permit applications in which the ombudsman has participated, any
2 rules or regulations that have been reviewed and the consistency
3 determinations made by the ombudsman, and a report concerning the
4 programs established for the registration and qualification of
5 professionals by the Director of the Division of Smart Growth in the
6 Department of Environmental Protection, the Department of
7 Transportation, and the Department of Community Affairs.

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

15

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

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

21 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
22 Growth Ombudsman appointed by the Governor pursuant to section
23 2 of P.L. , c. (C.) (pending before the Legislature as this
24 bill);

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

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

37 "Smart growth area" means an area designated pursuant to
38 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
39 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
40 a designated growth center in an endorsed plan; a smart growth area
41 and planning area designated in a master plan adopted by the New
42 Jersey Meadowlands Commission pursuant to subsection (i) of section
43 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
44 comprehensive management plan prepared and adopted by the
45 Pinelands Commission pursuant to section 7 of the "Pinelands
46 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise

1 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or
2 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
3 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
4 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
5 Community Affairs; or similar areas designated by the Department of
6 Environmental Protection.

7

8 5. a. There is established in the Department of Environmental
9 Protection a Division of Smart Growth under the direction of a
10 director, who shall be appointed by the Governor and report to the
11 Commissioner of Environmental Protection. The director shall review
12 and take action on permits for which the applicant has requested
13 expedited review pursuant to this section.

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

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

34 (a) the division shall notify an applicant within 20 days after the
35 filing date if the permit application lacks a submission identified on a
36 checklist therefor, or a submission has not been completed. If an
37 application, including the permit fee and all necessary documentation,
38 is determined to be complete, or if a notice of incompleteness is not
39 provided within 20 days after the filing of the application, the
40 application shall be deemed complete for purposes of commencing a
41 technical review. In the case of a permit application affecting
42 wetlands, a complete application shall include an effective letter of
43 interpretation issued by the department concerning the delineation of
44 the wetlands;

45 (b) (i) except as otherwise provided in subparagraph (ii) of this
46 subparagraph, the division shall notify an applicant if the permit

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

10 (ii) in the case of water allocation permits issued pursuant to the
11 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
12 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
13 an unconfined aquifer or surface water body and New Jersey Pollutant
14 Discharge Elimination System permits issued pursuant to the "Water
15 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a
16 discharge of 1,000,000 gallons per day or greater, the division shall
17 notify an applicant if the permit application is technically complete or
18 issue a notice of deficiency within 60 days after filing of the
19 application. If an application is determined to be technically complete,
20 or if a notice of deficiency is not issued within 60 days after filing of
21 the application, the application shall be deemed technically complete;

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

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

38 (e) in the cases of water allocation permits issued pursuant to the
39 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
40 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
41 a confined aquifer and New Jersey Pollutant Discharge Elimination
42 System permits issued pursuant to the "Water Pollution Control Act,"
43 P.L.1977, c.74 (C.58:10A-1 et seq.) for a discharge of less than
44 1,000,000 gallons per day, after a permit application is deemed
45 complete, and after a 30-day public comment period, the department
46 shall take action on the permit within five days if minimal or no

1 comments were received in the public comment period, or within 15
2 days if more than minimal comments were received in the public
3 comment period; and

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

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

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

32 e. (1) The Director of the Division of Smart Growth shall, within
33 120 days after the date of enactment of P.L. , c. (C.) (pending
34 before the Legislature as this bill), develop a program for the
35 qualification and registration of professionals who shall certify that a
36 permit application is complete and that the statutory and regulatory
37 requirements for the permit have been met by the applicant. The
38 requirements for qualification and registration may include, but shall
39 not be limited to, professional licensure relevant to the subject matter
40 of the permit, a review of projects undertaken by the professional
41 applying for qualification and registration, and a review of the nature
42 of the professional's services provided on each project.

43 (2) The director shall include in the program for the qualification
44 and registration of professionals any standards or requirements
45 necessary for proper administration and enforcement of the provisions
46 of P.L. , c. (C.) (pending before the Legislature as this

1 bill), and shall provide for the suspension or revocation of the
2 qualification and registration of professionals as provided in this
3 subsection.

4 (3) Any person who negligently violates any requirement of the
5 program established by the department for the qualification and
6 registration of professionals may lose professional licensure for one
7 year, may be barred from qualification and registration for a period of
8 three years, and the firm with which that individual is associated may
9 be barred from seeking qualification and registration for a period of
10 three years.

11 (4) If a person willfully or recklessly violates any requirement of
12 the program established by the department for the qualification and
13 registration of professionals, that individual shall lose professional
14 licensure for one year, shall be permanently barred from qualification
15 and registration, and the firm with which that individual is associated
16 shall be permanently barred from seeking qualification and registration.

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

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

31 g. 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 h. Applications for an expedited permit application review
36 pursuant to subsection c. of this section shall not be accepted until 120
37 days following the date of enactment of P.L. , c. (C.) (pending
38 before the Legislature as this bill). Applications pending on the date
39 of enactment of P.L. , c. (C.) (pending before the Legislature
40 as this bill) shall, upon request of the applicant, be processed in the
41 expedited permit application review program when it becomes
42 effective. A permit application that is the subject of a request under
43 this provision shall be transferred to the Division of Smart Growth for
44 processing in accordance with P.L. , c. (C.) (pending before
45 the Legislature as this bill).

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

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

6 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
7 Growth Ombudsman appointed by the Governor pursuant to section
8 2 of P.L. , c. (C.) (pending before the Legislature as this
9 bill);

10 "Permit" means any permit or approval issued by the Department
11 of Transportation pursuant to any law or any rule or regulation
12 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 7. a. There is established in the Department of Transportation a
34 Division of Smart Growth under the direction of a director, who shall
35 be appointed by the Governor and report to the Commissioner of
36 Transportation. The director shall review and take action on permits
37 for which the applicant has requested expedited review pursuant to
38 this section.

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

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

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

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

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

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

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

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

45 d. The direct and indirect costs of personnel, equipment, operating
46 expenses, and activities of the division shall be funded solely through

1 permit fees for permits issued in the smart growth areas. The
2 department shall, in consultation with the ombudsman, establish permit
3 fees necessary for the department to administer and enforce the
4 program. The fee schedule established pursuant to this subsection
5 shall include the department's pro rata share of the budget of the Smart
6 Growth Ombudsman. Within 30 days after the date of enactment of
7 P.L. , c. (C.) (pending before the Legislature as this bill), the
8 department, in consultation with the ombudsman, shall publish a
9 schedule of permit fees in the New Jersey Register and may amend the
10 fee schedule as necessary. The fee schedule may provide for increased
11 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.)
14 (pending 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, after consultation with the Smart Growth
6 Ombudsman, may adopt rules and regulations in accordance with the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
8 as appropriate to implement the requirements of this section and to
9 encourage development in the smart growth areas.

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

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

25
26 8. As used in section 9 of P.L. , c. (C.) (pending before
27 the Legislature as this bill):

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

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

35 "Permit" means any permit or approval required as a condition of
36 development or redevelopment and issued by the Department of
37 Community Affairs 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 9. a. There is established in the Department of Community Affairs
14 a Division of Smart Growth under the direction of a director, who
15 shall be appointed by the Governor and report to the Commissioner of
16 Community Affairs. The director shall review and take action on
17 permits for which the applicant has requested expedited review
18 pursuant to 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
5 45 days after the filing of the application, the application shall be
6 deemed 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),
34 the 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
4 before the Legislature as this bill).

5
6 10. a. In addition to the provisions of subsection c. of section 5,
7 subsection c. of section 7 and subsection c. of section 9 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), expedited
9 permit mechanisms, such as a permits-by-rule, general permits, and
10 certification by professionals qualified and registered in accordance
11 with subsection e. of section 5, subsection e. of section 7 or subsection
12 e. of section 9 of P.L. , c. (C.) (pending before the Legislature
13 as this bill), as appropriate, shall be made available in the smart growth
14 areas as determined appropriate by the Commissioner of
15 Environmental Protection, the Commissioner of Transportation, or the
16 Commissioner of Community Affairs, as appropriate, after consultation
17 with the Smart Growth Ombudsman.

18 b. The following permits or approvals in smart growth areas shall
19 be by permit-by-rule upon certification of compliance with statutory
20 and regulatory requirements by a professional qualified and registered
21 in accordance with subsection e. of section 5 of P.L. , c. (C.)
22 (pending before the Legislature as this bill):

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

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

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

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

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

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

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

45 (c) the voluntary reconstruction of a non-damaged legally
46 constructed, currently habitable residential or commercial development

1 landward of the existing footprint of development.

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

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

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

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

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

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

38 (6) the disturbance of certain degraded freshwater wetlands,
39 transition areas, or State open waters necessary for redevelopment of
40 an area previously significantly disturbed by industrial or commercial
41 activities provided that the disturbance shall not exceed one-tenth acre
42 of freshwater wetlands and one-quarter acre total disturbance
43 including transition areas;

44 (7) regulated activities in freshwater wetlands or transition areas,
45 necessary for the construction of additions or appurtenant
46 improvements to residential dwellings lawfully existing prior to July 1,

1 1988, provided that the improvements or additions require less than a
2 cumulative surface area of 750 square feet of fill or disturbance and
3 shall not result in new alterations to a freshwater wetland outside of
4 the 750 square foot area;

5 (8) regulated activities in freshwater wetlands, transition areas and
6 State open waters necessary for surveying and investigative activities,
7 including: soil borings dug by machine; hand dug soil borings larger
8 than three feet in diameter or depth; cutting of vegetation by machine
9 for a survey line; cutting of vegetation by hand for a survey line; and
10 digging of exploratory pits and other temporary activities necessary for
11 a geotechnical or archaeological investigation; and

12 (9) regulated activities in freshwater wetlands and transition areas
13 necessary for the repair or modification of a malfunctioning individual
14 subsurface sewage disposal system provided that the activity shall
15 disturb no more than one-quarter acre of freshwater wetlands or
16 transition areas combined.

17 d. The Director of the Division of Smart Growth established in the
18 Department of Environmental Protection pursuant to subsection a. of
19 section 5 of P.L. , c. (C.) (pending before the Legislature
20 as this bill) shall take action on minor stream encroachment permits for
21 an encroachment project that does not require hydrologic or hydraulic
22 review; does not require review of any stormwater detention basin;
23 does not increase potential for erosion or sedimentation in stream and
24 does not require substantial channel modification or relocation; and
25 does not need to be reviewed for the zero percent or 20 percent net fill
26 limitations other than that associated with a single family dwelling, in
27 smart growth areas within 30 days upon certification of compliance
28 with statutory and regulatory requirements by a professional qualified
29 and registered in accordance with subsection e. of section 5 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill).

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

- 37 (1) drainage;
- 38 (2) utility openings; and
- 39 (3) utility poles (new and relocation).

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

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

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

9
10 11. As used in sections 12 through 18 of P.L. , c. (C.)
11 (pending before the Legislature as this bill):

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

15 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
16 Growth Ombudsman appointed by the Governor pursuant to section
17 2 of P.L. , c. (C.) (pending before the Legislature as this
18 bill);

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

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

36 "Smart growth area" means an area designated pursuant to
37 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
38 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
39 a designated growth center in an endorsed plan; a smart growth area
40 and planning area designated in a master plan adopted by the New
41 Jersey Meadowlands Commission pursuant to subsection (i) of section
42 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
43 comprehensive management plan prepared and adopted by the
44 Pinelands Commission pursuant to section 7 of the "Pinelands
45 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
46 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or

1 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in
2 need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
3 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of
4 Community Affairs; or similar areas designated by the Department of
5 Environmental Protection.

6
7 12. Upon the request of the applicant and in accordance with
8 sections 14, 15, and 16 of P.L. , c. (C.) (pending before the
9 Legislature as this bill), the Office of Administrative Law shall provide
10 for the expedited appeal of any contested permit action for a proposed
11 project in a smart growth area. An applicant who does not exercise
12 this option retains the right to an administrative hearing and decision
13 on the permit application pursuant to the "Administrative Procedure
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

15
16 13. a. There is hereby established within the Office of
17 Administrative Law a Smart Growth Unit consisting of administrative
18 law judges having expertise in the matters heard pursuant to this
19 section. All cases transmitted to the Office of Administrative Law
20 pursuant to this section shall be assigned to and adjudicated by the
21 administrative law judges in the Smart Growth Unit.

22 b. The Governor with the advice and consent of the Senate shall
23 appoint administrative law judges to the Smart Growth Unit.
24 Administrative law judges appointed to the Smart Growth Unit shall
25 have expertise in the relevant subject areas pertaining to P.L. , c.
26 (C.) (pending before the Legislature as this bill) and shall be
27 subject to the terms of appointment and employment set forth in
28 sections 4 and 5 of P.L.1978, c.67 (C.52:14F-4) and (C.52:14F-5).
29 The Director of the Office of Administrative Law and Chief
30 Administrative Law Judge shall assign an administrative law judge as
31 the assignment judge for the unit.

32
33 14. a. Within 15 days after the receipt by the Division of Smart
34 Growth of notice of an applicant's request for an expedited review
35 pursuant to subparagraph (d) of paragraph (1) of subsection c. of
36 section 5, subparagraph (d) of paragraph (1) of subsection c. of
37 section 7, or subparagraph (d) of paragraph (1) of subsection c. of
38 section 9 of P.L. , c. (C.) (pending before the Legislature
39 as this bill), as appropriate, the Division of Smart Growth shall
40 transmit to the clerk of the Office of Administrative Law the
41 administrative record which shall consist of:

- 42 (1) the request for an expedited review of the application;
43 (2) the application;
44 (3) documents the applicant filed in support of the application;
45 (4) the qualified and registered professional's certification that the
46 application is complete and meets all statutory and regulatory

- 1 requirements for approval;
- 2 (5) the Division of Smart Growth's notices of deficiency, if any,
- 3 that the application is incomplete;
- 4 (6) the Division of Smart Growth's documentation, if any, in
- 5 support of its determination that the application is incomplete; and
- 6 (7) the applicant's request for an expedited hearing.
- 7 b. The case shall be assigned to an administrative law judge who
- 8 shall be a member of the Smart Growth Unit. Within 15 days after the
- 9 filing of the case with the clerk of the Office of Administrative Law,
- 10 the parties shall file briefs with the administrative law judge. There
- 11 shall be no presumptions in favor of either party. No other evidence
- 12 shall be admitted or relied upon, except by consent of the parties and
- 13 with approval of the administrative law judge. Discovery shall not be
- 14 available, except by consent of the parties. The standard of review
- 15 shall be by the preponderance of the evidence.
- 16 c. Within 30 days after the date of submission of the briefs, the
- 17 administrative law judge shall issue a written decision as to whether
- 18 the application is complete. The time limits established herein shall
- 19 not be extended except by consent of the parties.
- 20 d. If the administrative law judge decides that the application is
- 21 complete, the Director of the Division of Smart Growth shall take
- 22 action to approve, approve with conditions or deny the permit
- 23 application within 45 days after the receipt of the decision.
- 24 e. The decision of the administrative law judge on the issue of
- 25 completeness of the application shall be the final decision binding on
- 26 the parties and shall not be subject to further review or appeal by
- 27 either the Division of Smart Growth established pursuant to sections
- 28 5, 7 or 9 of P.L. , c. (C.) (pending before the Legislature as
- 29 this bill), as appropriate, or the applicant.
- 30 f. An applicant who does not request an expedited review
- 31 pursuant to subparagraph (d) of paragraph (1) of subsection c. of
- 32 section 5, subparagraph (d) of paragraph (1) of subsection c. of
- 33 section 7 or subparagraph (d) of paragraph (1) of subsection c. of
- 34 section 9 of P.L. , c. (C.) (pending before the Legislature
- 35 as this bill), as appropriate, retains the right to an administrative
- 36 hearing and decision on the permit application pursuant to the
- 37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
- 38 seq.).
- 39
- 40 15. a. If an application for a permit for a proposed project in a
- 41 smart growth area is denied, the Office of Administrative Law shall
- 42 provide an expedited hearing to review the denial of the permit upon
- 43 the request of the applicant. An applicant who does not request a
- 44 hearing pursuant to this section retains the right to an administrative
- 45 hearing and decision on the permit application pursuant to the
- 46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.).

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

6 (1) the application;

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

8 (3) the qualified and registered professional's certification that the
9 application is complete and meets all statutory and regulatory
10 requirements for approval;

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

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

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

16 c. The case shall be assigned to an administrative law judge who
17 shall be a member of the Smart Growth Unit. The administrative law
18 judge shall establish an expedited briefing and hearing schedule. Any
19 hearings shall be concluded within 45 days after receipt of the case by
20 the administrative law judge.

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

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

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

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

40

41 16. a. If an application for a permit for a proposed project in a
42 smart growth area is approved by the Division of Smart Growth with
43 terms or conditions, the Office of Administrative Law shall provide an
44 expedited hearing and decision on any terms or conditions of such
45 permit upon the request of the applicant. An applicant who does not
46 request an expedited hearing pursuant to this section retains the right

1 to an administrative hearing and decision on the permit application
2 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.).

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

8 (1) the application;

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

10 (3) the qualified and registered professional's certification that the
11 application is complete and meets all statutory and regulatory
12 requirements for approval;

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

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

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

19 c. The case shall be assigned to an administrative law judge who
20 shall be a member of the Smart Growth Unit. The administrative law
21 judge shall establish an expedited briefing and hearing schedule. Any
22 hearings shall be concluded within 45 days after receipt of the case by
23 the administrative law judge.

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

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

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

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

43

44 17. The Office of Administrative Law shall have authority to
45 establish filing fees, payable by the applicant, necessary to administer
46 the Smart Growth Unit, including the direct and indirect costs for

1 personnel, operating expenses, equipment and activities of the Smart
2 Growth Unit. These filing fees shall be published in the New Jersey
3 Register and shall be effective upon publication therein.

4
5 18. The Office of Administrative Law may adopt those rules and
6 regulations that it deems necessary to carry out the requirements of
7 P.L. , c. (C.) (pending before the Legislature as this bill),
8 which shall be effective upon filing.

9
10 19. Nothing in this act shall be construed to apply to, or affect in
11 any way, the preservation area of the Highlands Region as defined
12 pursuant to P.L.2004, c. (C.) (now in the Legislature as Senate
13 Bill No. 1), or the authority of any State department or agency to
14 adopt any rules and regulations for the preservation area.

15
16 20. This act shall take effect immediately.

17
18
19 _____
20
21 Streamlines certain permitting in smart growth areas.

[Corrected Copy]

SENATE, No. 1368

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED MARCH 22, 2004

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

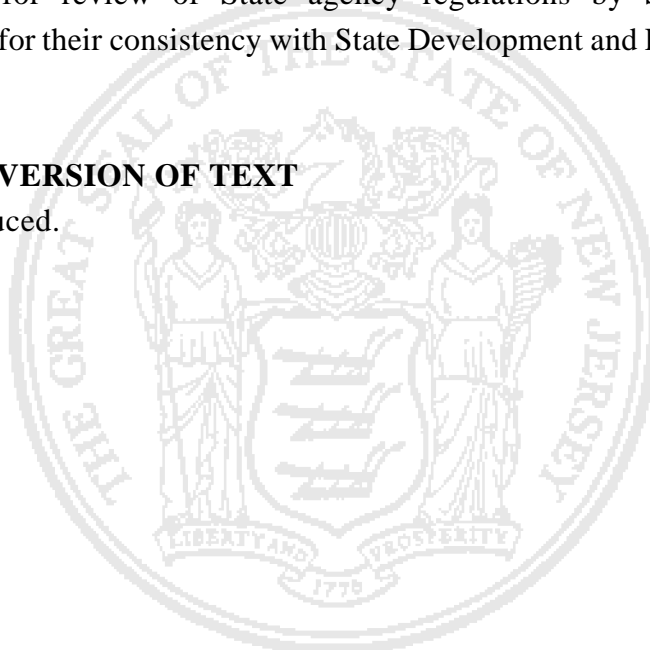
Senators Scutari, Coniglio and Madden

SYNOPSIS

Provides for review of State agency regulations by State Planning Commission for their consistency with State Development and Redevelopment Plan.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/11/2004)

1 AN ACT providing for review of regulations issued by State agencies
2 for consistency with State Development and Redevelopment Plan
3 and supplementing P.L.1985, c.398 (C.52:18A-196 et seq.).
4

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

7
8 1. The Legislature finds and declares that:

9 a. The State Planning Commission was created by and specifically
10 authorized under subsection e. of section 4 of the "State Planning
11 Act," P.L.1985, c.398 (C.52:18A-199) to "recommend to the
12 Governor and the Legislature administrative or legislative action to
13 promote a more efficient and effective planning process; under
14 subsection f. of that section, "to review any bill introduced in either
15 house of the Legislature which appropriates funds for a capital project
16 and may study the necessity, desirability and relative priority of the
17 appropriation by reference to the State Development and
18 Redevelopment Plan, and may make recommendations to the
19 Legislature and to the Governor concerning the bill; and, under
20 subsection g. of that section, to take all actions necessary and proper
21 to carry out the provisions of the "State Planning Act";

22 b. The State Planning Commission is also mandated, under section
23 4 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-199), to
24 prepare and adopt the State Development and Redevelopment Plan
25 which shall "provide a coordinated, integrated and comprehensive plan
26 for the growth, development, renewal and conservation of the state
27 and its regions";

28 c. The State Planning Commission adopted a State Plan in 1992
29 and again in 2001;

30 d. The appropriate implementation of the State Plan relies, in part,
31 on actions of State agencies and independent authorities, through the
32 rulemaking authority conferred by section 8 of P.L.1985, c.398
33 (C.52:18A-203);

34 e. Several administrations, through Executive Orders, including
35 Executive Order 4 of 2002, have repeatedly instructed State agencies
36 and independent authorities to pursue every action necessary to
37 implement the State Development and Redevelopment Plan;

38 f. State agencies and independent authorities have proposed and
39 adopted numerous administrative rules and regulations since 1992;

40 g. The Legislature has determined that many of these rules and
41 regulations have had a questionable impact in implementing the State
42 Development and Redevelopment Plan; and

43 h. The Legislature has determined that there is a need to provide
44 the State Planning Commission with an opportunity to assess whether
45 rules and regulations proposed by State agencies and independent

1 authorities most effectively and appropriately serve to implement the
2 State Development and Redevelopment Plan.

3

4 2. The State Planning Commission shall review any rules and
5 regulations proposed by any State agency or independent authority and
6 assess whether the proposed rules and regulations are consistent with
7 the goals, objectives, policies and strategies of the State Development
8 and Redevelopment Plan.

9

10 3. Every State agency and independent authority shall forward any
11 proposed rules and regulations to the chairperson of the State Planning
12 Commission prior to submission for publication in the New Jersey
13 Register.

14

15 4. The State Planning Commission shall, within 45 calendar days
16 of receiving the proposed rules or regulations, provide the State
17 agency or independent authority with a written assessment of whether
18 or not the proposed rules or regulations are consistent with the goals,
19 objectives, policies and strategies of the State Development and
20 Redevelopment Plan, along with any modifications thereto considered
21 necessary to make the proposed rules and regulations consistent with
22 the goals, objectives, policies and strategies of the State Development
23 and Redevelopment Plan.

24

25 5. The State Planning Commission may, by a majority vote of the
26 fully authorized membership thereof, veto any rules or regulations
27 proposed by any State agency or independent authority determined to
28 be not consistent with the goals, objectives, policies and strategies of
29 the State Development and Redevelopment Plan.

30

31 6. The State Planning Commission shall be assisted in its function
32 pursuant to P.L. , c. (C.) (pending before the Legislature as
33 this bill) by professional and technical staff of its choosing from the
34 Office of Smart Growth or any other State agency. This professional
35 and technical staff shall report directly to the chairperson of the State
36 Planning Commission with respect to their responsibilities in assessing
37 the consistency of rules and regulations proposed by State agencies
38 and independent authorities.

39

40 7. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill requires the State Planning Commission to review any rules
46 and regulations proposed by State agencies and independent

S1368 SWEENEY, CODEY

4

1 authorities for consistency with the goals, objectives, policies and
2 strategies of the State Development and Redevelopment Plan. The bill
3 authorizes the State Planning Commission, by a majority vote of the
4 fully authorized membership thereof, to veto any rules and regulations
5 proposed by State agencies and independent authorities determined to
6 be not consistent with the goals, objectives, policies and strategies of
7 the State Development and Redevelopment Plan and to provide
8 specific modifications to those rules and regulations as may be needed
9 to bring them into conformance with the goals, objectives, policies and
10 strategies of the State Development and Redevelopment Plan.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

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

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

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

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

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

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

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

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

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

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

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

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

ASSEMBLY, No. 3008

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 14, 2004

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Streamlines certain permitting in smart growth areas.

CURRENT VERSION OF TEXT

As introduced.



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, and
6 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.)
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.) (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.) (before the Legislature as this bill);

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

33 "Person" means any individual, corporation, company, partnership,
34 firm, association, owner or operator of a treatment works, political
35 subdivision of this State, or State or interstate agency;

36 "Previously developed site" means any commercial, industrial, or
37 retail area, even if abandoned, overgrown, or in disrepair, where one
38 or more of the following features legally existed on the date of
39 enactment of P.L. , c. (C.) (pending before the Legislature
40 as this bill):

41 (1) A building or structure as those terms are defined pursuant to
42 section 3 of P.L.1975, c.217 (C.52:27D-121), including the footprint
43 of the building or structure and an area extending 300 feet in all
44 directions of the footprint, but in no event shall the area exceed the lot
45 upon which the building or structure is situated;

46 (2) A permanent foundation or footing including the footprint of the

1 foundation or footing, and an area extending 300 feet in all directions
2 of the footprint, but in no event shall the area exceed the lot upon
3 which the foundation or footing is situated;

4 (3) Concrete or asphalt pavement other than a pedestrian walkway,
5 including the footprint of the pavement, and an area extending 300 feet
6 in all directions of the footprint, but in no event shall the area exceed
7 the lot upon which the pavement is situated; or

8 (4) Any area covered by paving blocks, gravel, crushed stone, or
9 maintained lawn within 50 feet of the development listed in (1)
10 through (3) above, except that such 50-foot envelope shall not be
11 applicable to a paved road, or utility or railroad right-of-way.

12 The term "previously developed site" shall include the area that
13 extends to the perimeter defined by any of the site features, other than
14 roads, listed in (1) through (3) above that lies within 300 feet of
15 another site feature, plus an additional 300 feet beyond the perimeter
16 so defined but not beyond the block and lot; 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.);
28 an area determined to be in need of redevelopment pursuant to
29 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and
30 as approved by the Department of Community Affairs; a previously
31 developed site; or similar areas designated by the Department of
32 Environmental Protection.

33

34 2. a. There is created in the Department of Community Affairs a
35 Smart Growth Ombudsman. The Smart Growth Ombudsman shall be
36 appointed by the Governor, serve at the pleasure of the Governor, and
37 report to the Governor.

38 b. The activities and duties of the Smart Growth Ombudsman shall
39 be funded out of revenues collected pursuant to the fee schedule
40 adopted pursuant to subsection d. of sections 5, 7 and 9 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill) and
42 remitted to the Smart Growth Ombudsman.

43 c. The Smart Growth Ombudsman may call upon the assistance of
44 the services of those employees of any State, county or municipal
45 department, board, bureau, commission or agency as may be required
46 and as may be necessary for its purposes. In addition, the Smart

1 Growth Ombudsman may call upon any department, agency or office
2 of the State of New Jersey for such documents, materials and
3 information as it may deem necessary.

4
5 3. The Smart Growth Ombudsman shall:

6 a. in conjunction with the directors of the Divisions of Smart
7 Growth established pursuant to sections 5, 7 and 9 of P.L. , c.

8 (C.) (pending before the Legislature as this bill), review all
9 relevant permit programs and requirements and make
10 recommendations to the Governor and the departments regarding
11 integration of multiple review and approval processes and
12 recommendations on those permits for which approval may be
13 expedited in smart growth areas through mechanisms such as permits-
14 by-rule, general permits or pre-qualification of professionals;

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

20 c. at the request of an applicant, participate in the permit
21 application and review process to ensure compliance with the time
22 frames set forth in subsection c. of section 5, 7 or 9, as the case may
23 be, of P.L. , c. (C.) (pending before the Legislature as this
24 bill); and

25 d. review any new rules proposed by any State agency and
26 determine whether the proposed rules, as they pertain to the smart
27 growth areas, are consistent with the State Development and
28 Redevelopment Plan. In the event that the Smart Growth Ombudsman
29 determines that the proposed rules in the growth areas are not
30 consistent with the State Development and Redevelopment Plan, the
31 Smart Growth Ombudsman shall return the proposed rules to the State
32 agency with recommended amendments necessary to make the
33 proposed rules consistent with the State Development and
34 Redevelopment Plan. A State agency shall not file proposed new rules
35 for publication in the New Jersey Register unless and until the Smart
36 Growth Ombudsman determines the proposed rules in the smart
37 growth areas are consistent with the State Development and
38 Redevelopment Plan. The requirements of this section may be waived
39 upon a written determination by the Chief Counsel to the Governor
40 that the proposed rules are required to implement a federal or state
41 mandate.

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

45 "Applicant" means any person applying for a permit pursuant to
46 section 5 or 10 of P.L. , c. (C.) (before the Legislature

1 as this bill);

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

17 "Previously developed site" means any commercial, industrial, or
18 retail area, even if abandoned, overgrown, or in disrepair, where one
19 or more of the following features legally existed on the date of
20 enactment of P.L. , c. (C.) (pending before the Legislature
21 as this bill):

22 (1) A building or structure as those terms are defined pursuant to
23 section 3 of P.L.1975, c.217 (C.52:27D-121), including the footprint
24 of the building or structure and an area extending 300 feet in all
25 directions of the footprint, but in no event shall the area exceed the lot
26 upon which the building or structure is situated;

27 (2) A permanent foundation or footing including the footprint of the
28 foundation or footing, and an area extending 300 feet in all directions
29 of the footprint, but in no event shall the area exceed the lot upon
30 which the foundation or footing is situated;

31 (3) Concrete or asphalt pavement other than a pedestrian walkway,
32 including the footprint of the pavement, and an area extending 300 feet
33 in all directions of the footprint, but in no event shall the area exceed
34 the lot upon which the pavement is situated; or

35 (4) Any area covered by paving blocks, gravel, crushed stone, or
36 maintained lawn within 50 feet of the development listed 1 through 3
37 above, except that such 50-foot envelope shall not be applicable to a
38 paved road, or utility or railroad right-of-way.

39 The term "previously developed site" shall include the area that
40 extends to the perimeter defined by any of the site features, other than
41 roads, listed in (1) through (3) that lies within 300 feet of another site
42 feature, plus an additional 300 feet beyond the perimeter so defined
43 but not beyond the block and lot; and

44 "Smart growth area" means an area designated pursuant to
45 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
46 (Metropolitan), Planning Area 2 (Suburban), a designated center, or

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

14

15 5. a. There is established in the Department of Environmental
16 Protection a Division of Smart Growth under the direction of a
17 director, who shall be appointed by the Governor and report to the
18 commissioner. The director shall review and issue permits for which
19 the applicant has requested expedited review pursuant to this section.

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

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

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

1 interpretation issued by the department concerning the delineation of
2 the wetlands;

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

14 (b) in the case of water allocation permits issued pursuant to the
15 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
16 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
17 an unconfined aquifer or surface water and New Jersey Pollutant
18 Discharge Elimination System permits issued pursuant to the "Water
19 Pollution Control Act," P.L.1974, c.74 (C.58:10A-1 et seq.) for a
20 discharge of 1,000,000 gallons per day or greater, the division shall
21 notify an applicant if the permit application is technically complete or
22 issue a notice of deficiency within 60 days after filing of the
23 application. If an application is determined to be technically complete,
24 or if a notice of deficiency is not issued within 60 days after filing of
25 the application, the application shall be deemed technically complete;

26 (3) except as provided in paragraphs (5) and (6) of this subsection,
27 the division shall take action on a technically complete permit
28 application within 45 days, except that this time period may be
29 extended for a 30-day period by the mutual consent of the applicant
30 and the department. In the event that the department fails to take
31 action on an application for a permit within the 45-day period specified
32 herein, then the application shall be deemed to have been approved;

33 (4) if more than one notice of deficiency is issued by the division,
34 the applicant may request an expedited hearing in accordance with
35 section 10 of P.L. , c. (C.) (pending before the Legislature
36 as this bill) to determine whether the application is technically
37 complete;

38 (5) in the cases of water allocation permits issued pursuant to the
39 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
40 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
41 a confined aquifer and New Jersey Pollutant Discharge Elimination
42 System permits issued pursuant to the "Water Pollution Control Act,"
43 P.L.1974, c.74 (C.58:10A-1 et seq.) for a discharge of less than
44 1,000,000 gallons per day, after a permit application is deemed
45 complete, and after a 30 day public comment period, the department
46 shall take action on the permit within five days if minimal or no

1 comments were received in the public comment period, or within 15
2 days if more than minimal comments were received in the public
3 comment period; and

4 (6) in the cases of water allocation permits issued pursuant to the
5 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
6 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
7 an unconfined aquifer or surface water and New Jersey Pollutant
8 Discharge Elimination System permits issued pursuant to the "Water
9 Pollution Control Act," P.L.1974, c.74 (C.58:10A-1 et seq.) for a
10 discharge of 1,000,000 gallons per day or greater, after a permit
11 application is deemed complete, and after a 30 day public comment
12 period, the department shall take action on the permit within five days
13 if minimal or no comments were received in the public comment
14 period, or within 45 days if more than minimal comments were
15 received in the public comment period.

16 (7) Nothing in this subsection shall supersede shorter periods for
17 department action provided by applicable law.

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

32 e. (1) The Director of the Division of Smart Growth shall, within
33 120 days after the date of enactment of P.L. , c. (C.)
34 (pending before the Legislature as this bill), develop a program for the
35 qualification and registration of professionals who shall be authorized
36 to certify that a permit application is complete and that the statutory
37 and regulatory requirements for the permit have been met by the
38 applicant. The requirements for qualification and registration may
39 include, but shall not be limited to, professional licensure relevant to
40 the subject matter of the permit, a review of projects undertaken by
41 the professional applying for qualification and registration, and a
42 review of the nature of the professional's services provided on each
43 project.

44 (2) The director shall include in the program for the qualification
45 and registration of professionals any standards or requirements
46 necessary for proper administration and enforcement of the provisions

1 of P.L. , c. (C.) (pending before the Legislature as this
2 bill), and shall provide for the suspension or revocation of the
3 qualification and registration of professionals as provided in this
4 subsection.

5 (3) Any person who negligently violates any requirement of the
6 program established by the department for the qualification and
7 registration of professionals shall lose professional licensure for one
8 year and the firm with which that individual is associated shall be
9 barred from seeking qualification and registration for a period of three
10 years.

11 (4) If a person willfully or recklessly violates any requirement of the
12 program established by the department for the qualification and
13 registration of professionals, that individual and the firm with which
14 that individual is associated shall be permanently barred from seeking
15 qualification and registration.

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

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

30 g. No provision of this section shall be construed or implemented
31 in such a way as to modify any requirement of law that is necessary to
32 retain federal delegation to the State of the authority to implement a
33 federal law or program.

34 h. Applications for an expedited permit application review pursuant
35 to subsection c. of this section shall not be accepted until 120 days
36 following the date of enactment of P.L. , c. (C.) (pending
37 before the Legislature as this bill). Applications pending on the date
38 of enactment of P.L. , c. (C.) (pending before the
39 Legislature as this bill) shall, upon request of the applicant, participate
40 in the expedited permit application review program when it becomes
41 effective. A permit application that is the subject to a request under
42 this provision shall be transferred to the Division of Smart Growth for
43 processing in accordance with P.L. , c. (C.) (pending
44 before the Legislature as this bill).

45

46 6. As used in section 7 of P.L. , c. (C.) (before

1 the Legislature as this bill):

2 "Applicant" means any person applying for a permit pursuant to
3 section 7 or 10, as appropriate, of P.L. , c. (C.)
4 (before the Legislature as this bill);

5 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
6 Growth Ombudsman appointed by the Governor pursuant to section
7 2 of P.L. , c. (C.) (before the Legislature as this bill);

8 "Permit" means any permit or approval issued by the Department
9 of Transportation pursuant to any law, or any rule or regulation
10 adopted pursuant thereto;

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

14 "Previously developed site" means any commercial, industrial, or
15 retail area, even if abandoned, overgrown, or in disrepair, where one
16 or more of the following features legally existed on the date of
17 enactment of P.L. , c. (C.) (pending before the Legislature
18 as this bill):

19 (1) A building or structure as those terms are defined pursuant to
20 section 3 of P.L.1975, c.217 (C.52:27D-121), including the footprint
21 of the building or structure and an area extending 300 feet in all
22 directions of the footprint, but in no event shall the area exceed the lot
23 upon which the building or structure is situated;

24 (2) A permanent foundation or footing including the footprint of the
25 foundation or footing, and an area extending 300 feet in all directions
26 of the footprint, but in no event shall the area exceed the lot upon
27 which the foundation or footing is situated;

28 (3) Concrete or asphalt pavement other than a pedestrian walkway,
29 including the footprint of the pavement, and an area extending 300 feet
30 in all directions of the footprint, but in no event shall the area exceed
31 the lot upon which the pavement is situated; or

32 (4) Any area covered by paving blocks, gravel, crushed stone, or
33 maintained lawn within 50 feet of the development listed 1 through 3
34 above, except that such 50-foot envelope shall not be applicable to a
35 paved road, or utility or railroad right-of-way.

36 The term "previously developed site" shall include the area that
37 extends to the perimeter defined by any of the site features, other than
38 roads, listed in (1) through (3) that lies within 300 feet of another site
39 feature, plus an additional 300 feet beyond the perimeter so defined
40 but not beyond the block and lot; and

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

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

11

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

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

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

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

43 (2) the division shall notify an applicant if the permit application is
44 technically complete or issue a notice of deficiency within 45 days
45 after the filing of the application. If an application is determined to be
46 technically complete or if a notice of deficiency is not issued within 45

1 days after the filing of the application, the application shall be deemed
2 technically complete. A notice of deficiency shall itemize all
3 deficiencies that must be addressed in order for the application to be
4 determined technically complete. A notice of deficiency shall be
5 deemed exclusive and further review for technical completeness shall
6 be limited to the items so identified;

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

13 (4) 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 10 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) to determine whether the application is technically
17 complete; and

18 (5) nothing in this subsection shall supersede shorter periods for
19 department action provided by applicable law.

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

33 e. (1) The Director of the Division of Smart Growth shall, within
34 120 days after the date of enactment of P.L. , c. (C.)
35 (pending before the Legislature as this bill), develop a program for the
36 qualification and registration of professionals who shall be authorized
37 to certify that a permit application is complete and that the statutory
38 and regulatory requirements for the permit have been met by the
39 applicant. The requirements for qualification and registration may
40 include, but shall not be limited to, professional licensure relevant to
41 the subject matter of the permit, a review of projects undertaken by
42 the professional applying for qualification and registration, and a
43 review of the nature of the professional's services provided on each
44 project.

45 (2) The director shall include in the program for the qualification
46 and registration of professionals any standards or requirements

1 necessary for proper administration and enforcement of the provisions
2 of P.L. , c. (C.) (pending before the Legislature as this
3 bill), and shall provide for the suspension or revocation of the
4 qualification and registration of professionals as provided in this
5 subsection.

6 (3) Any person who negligently violates any requirement of the
7 program established by the department for the qualification and
8 registration of professionals shall lose professional licensure for one
9 year and the firm with which that individual is associated shall be
10 barred from seeking qualification and registration for a period of three
11 years.

12 (4) If a person willfully or recklessly violates any requirement of the
13 program established by the department for the qualification and
14 registration of professionals established by the department, that
15 individual and the firm with which that individual is associated shall be
16 permanently barred from seeking qualification and registration.

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

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

30 g. No provision of this section shall be construed or implemented
31 in such a way as to modify any requirement of law that is necessary to
32 retain federal delegation to the State of the authority to implement a
33 federal law or program.

34 h. Applications for an expedited permit application review pursuant
35 to subsection c. of this section shall not be accepted until 120 days
36 following the date of enactment of P.L. , c. (C.) (pending
37 before the Legislature as this bill). Applications pending on the date
38 of enactment of P.L. , c. (C.) (pending before the
39 Legislature as this bill) shall, upon request of the applicant, participate
40 in the expedited permit application review program when it becomes
41 effective. A permit application that is the subject to a request under
42 this provision shall be transferred to the Division of Smart Growth for
43 processing in accordance with P.L. , c. (C.) (pending
44 before the Legislature as this bill).

45

46 8. As used in section 9 of P.L. , c. (C.) (before

1 the Legislature as this bill):

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

5 "Ombudsman" or "Smart Growth Ombudsman" means the Smart
6 Growth Ombudsman appointed by the Governor pursuant to section
7 2 of P.L. , c. (C.) (before the Legislature as this bill);

8 "Permit" means any permit or approval issued by the Department
9 of Community Affairs pursuant to any law, or any rule or regulation
10 adopted pursuant thereto;

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

14 "Previously developed site" means any commercial, industrial, or
15 retail area, even if abandoned, overgrown, or in disrepair, where one
16 or more of the following features legally existed on the date of
17 enactment of P.L. , c. (C.) (pending before the Legislature
18 as this bill):

19 (1) A building or structure as those terms are defined pursuant to
20 section 3 of P.L.1975, c.217 (C.52:27D-121), including the footprint
21 of the building or structure and an area extending 300 feet in all
22 directions of the footprint, but in no event shall the area exceed the lot
23 upon which the building or structure is situated;

24 (2) A permanent foundation or footing including the footprint of the
25 foundation or footing, and an area extending 300 feet in all directions
26 of the footprint, but in no event shall the area exceed the lot upon
27 which the foundation or footing is situated;

28 (3) Concrete or asphalt pavement other than a pedestrian walkway,
29 including the footprint of the pavement, and an area extending 300 feet
30 in all directions of the footprint, but in no event shall the area exceed
31 the lot upon which the pavement is situated; or

32 (4) Any area covered by paving blocks, gravel, crushed stone, or
33 maintained lawn within 50 feet of the development listed 1 through 3
34 above, except that such 50-foot envelope shall not be applicable to a
35 paved road, or utility or railroad right-of-way.

36 The term "previously developed site" shall include the area that
37 extends to the perimeter defined by any of the site features, other than
38 roads, listed in (1) through (3) that lies within 300 feet of another site
39 feature, plus an additional 300 feet beyond the perimeter so defined
40 but not beyond the block and lot; and

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

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

11

12 9. a. There is established in the Department of Community Affairs
13 a Division of Smart Growth under the direction of a director, who
14 shall be appointed by the Governor and report to the commissioner.
15 The director shall review and issue permits for which the applicant has
16 requested expedited review pursuant to this section.

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

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

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

43 (2) the division shall notify an applicant if the permit application is
44 technically complete or issue a notice of deficiency within 45 days
45 after the filing of the application. If an application is determined to be
46 technically complete, or if a notice of deficiency is not issued within

1 45 days after the filing of the application, the application shall be
2 deemed technically complete. A notice of deficiency shall itemize all
3 deficiencies that must be addressed in order for the application to be
4 determined technically complete. A notice of deficiency shall be
5 deemed exclusive and further review for technical completeness shall
6 be limited to the items so identified;

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

13 (4) 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 10 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) to determine whether the application is technically
17 complete; and

18 (5) nothing in this subsection shall supersede shorter periods for
19 department action provided by applicable law.

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

33 e. (1) The Director of the Division of Smart Growth shall, within
34 120 days after the date of enactment of P.L. , c. (C.)
35 (pending before the Legislature as this bill), develop a program for the
36 qualification and registration of professionals who shall be authorized
37 to certify that a permit application is complete and that the statutory
38 and regulatory requirements for the permit have been met by the
39 applicant. The requirements for qualification and registration may
40 include, but shall not be limited to, professional licensure relevant to
41 the subject matter of the permit, a review of projects undertaken by
42 the professional applying for qualification and registration, and a
43 review of the nature of the professional's services provided on each
44 project.

45 (2) The director shall include in the program for the qualification
46 and registration of professionals any standards or requirements

1 necessary for proper administration and enforcement of the provisions
2 of P.L. , c. (C.) (pending before the Legislature as this
3 bill), and shall provide for the suspension or revocation of the
4 qualification and registration of professionals as provided in this
5 subsection.

6 (3) Any person who negligently violates any requirement of the
7 program established by the department for the qualification and
8 registration of professionals shall lose professional licensure for one
9 year and the firm with which that individual is associated shall be
10 barred from seeking qualification and registration for a period of three
11 years.

12 (4) If a person willfully or recklessly violates any requirement of the
13 program established by the department for the qualification and
14 registration of professionals established by the department, that
15 individual and the firm with which that individual is associated shall be
16 permanently barred from seeking qualification and registration.

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

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

30 g. No provision of this section shall be construed or implemented
31 in such a way as to modify any requirement of law that is necessary to
32 retain federal delegation to the State of the authority to implement a
33 federal law or program.

34 h. Applications for an expedited permit application review pursuant
35 to subsection c. of this section shall not be accepted until 120 days
36 following the date of enactment of P.L. , c. (C.) (pending
37 before the Legislature as this bill). Applications pending on the date
38 of enactment of P.L. , c. (C.) (pending before the Legislature
39 as this bill) shall, upon request of the applicant, participate in the
40 expedited permit application review program when it becomes
41 effective. A permit application that is the subject to a request under
42 this provision shall be transferred to the Division of Smart Growth for
43 processing in accordance with P.L. , c. (C.) (pending before
44 the Legislature as this bill).

45

46 10. a. In addition to the provisions of subsection c. of sections 5,

1 7 and 9 of P.L. , c. (C.) (pending before the Legislature as
2 this bill), expedited permit mechanisms, such as a permits-by-rule,
3 general permits, and certification by professionals qualified and
4 registered in accordance with subsection e. of section 5, 7 or 9 of
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 as appropriate, shall be made available in the smart growth areas as
7 determined appropriate by the Commissioner of Environmental
8 Protection, the Commissioner of Transportation or the Commissioner
9 of Community Affairs, as appropriate, after consultation with the
10 Smart Growth Ombudsman.

11 b. The following permits or approvals shall be by permit-by-rule
12 upon certification of compliance with statutory and regulatory
13 requirements by a professional qualified and registered in accordance
14 with subsection e. of section 5 of P.L. , c. (C.) (before the
15 Legislature as this bill):

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

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

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

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

28 (5) the following wetlands general permits issued by the
29 Department of Environmental Protection pursuant to the Freshwater
30 Wetlands Protection Act Rules adopted under the authority of the
31 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
32 et seq.) and in effect on June 14, 2004, provided the application
33 includes an effective letter of interpretation issued by the department
34 pursuant to section 8 of P.L.1987, c.156 (C.13:9B-8):

35 (a) a regulated activity in a freshwater wetland, transition area, or
36 State open water, if the freshwater wetland or State open water is not
37 part of a surface water tributary system discharging into an inland lake
38 or pond, or a river or stream, and provided the activity shall disturb no
39 more than one-quarter acre of a freshwater wetland, transition area, or
40 State open water;

41 (b) regulated activities in freshwater wetlands or transition areas,
42 necessary for the construction of additions or appurtenant
43 improvements to residential dwellings lawfully existing prior to July 1,
44 1988, provided that the improvements or additions require less than a
45 cumulative surface area of 750 square feet of fill or disturbance and
46 shall not result in new alterations to a freshwater wetland outside of

1 the 750 square foot area;

2 (c) regulated activities in freshwater wetlands, transition areas and
3 State open waters necessary for surveying and investigative activities,
4 including: soil borings dug by machine; hand dug soil borings larger
5 than three feet in diameter or depth; cutting of vegetation by machine
6 for a survey line; cutting of vegetation by hand for a survey line; and
7 digging of exploratory pits and other temporary activities necessary for
8 a geotechnical or archaeological investigation; and

9 (d) regulated activities in freshwater wetlands and transition areas
10 necessary for the repair or modification of a malfunctioning individual
11 subsurface sewage disposal system provided that the activity shall
12 disturb no more than one-quarter acre of freshwater wetlands or
13 transition areas combined;

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

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

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

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

27 (7) The following Highway Occupancy permits:

28 (a) drainage;

29 (b) utility openings; and

30 (c) utility poles (new and relocation).

31 c. The Division of Smart Growth established in the Department of
32 Environmental Protection pursuant to subsection a. of section 5 of
33 P.L. , c. (C.) (pending before the Legislature as this bill) shall
34 approve or deny the following general permits within 30 days upon
35 certification of compliance with statutory and regulatory requirements
36 by a professional qualified and registered in accordance with
37 subsection e. of section 5 of P.L. , c. (C.) (pending before the
38 Legislature as this bill):

39 (1) The following wetlands general permits issued by the
40 Department of Environmental Protection pursuant to the Freshwater
41 Wetlands Protection Act Rules adopted under the authority of the
42 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
43 et seq.) and in effect on June 14, 2004, provided the application
44 includes an effective letter of interpretation issued by the department
45 pursuant to section 8 of P.L.1987, c.156 (C.13:9B-8):

46 (a) regulated activities in freshwater wetlands, transition areas, or

1 State open waters, necessary for the construction or maintenance of
2 an underground utility line provided that any permanent above-ground
3 disturbance of wetlands, transition area, or State open waters shall be
4 no greater than one acre;

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

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

16 (d) regulated activities in freshwater wetlands, transition areas, or
17 State open waters, necessary to stabilize the bank of a water body in
18 order to reduce or prevent erosion through bioengineering methods;

19 (e) regulated activities in freshwater wetlands, transition areas, or
20 State open waters, necessary for the construction of an above ground
21 utility line; and

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

28 (2) Minor stream encroachment permits for an encroachment
29 project that does not require hydrologic or hydraulic review; does not
30 require review of any stormwater detention basin; does not increase
31 potential for erosion or sedimentation in stream and does not require
32 substantial channel modification or relocation; and does not need to be
33 reviewed for the zero percent or 20 percent "net fill" limitations other
34 than that associated with a single family dwelling.

35 d. Notwithstanding the provisions P.L.1987, c.156 (C.13:9B-1 et
36 seq.), or any rule or regulation adopted pursuant thereto, to the
37 contrary, an activity conducted under the authority of a general permit
38 issued by the Department of Environmental Protection pursuant to
39 section 23 of P.L.1987, c.156 (C.13:9B-23) may occur in a vernal
40 habitat located within a smart growth area or in a transition area
41 adjacent to a vernal habitat located within a smart growth area.

42
43 11. As used in sections 12 through 18 of P.L. , c. (C.)
44 (before the Legislature as this bill):

45 "Applicant" means any person applying for a permit pursuant to
46 section 3, 5, 7, 9 or 10 of P.L. , c. (C.) (before the Legislature

1 as this bill);

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

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

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

18 "Previously developed site" means any commercial, industrial, or
19 retail area, even if abandoned, overgrown, or in disrepair, where one
20 or more of the following features legally existed on the date of
21 enactment of P.L. , c. (C.) (pending before the Legislature
22 as this bill):

23 (1) A building or structure as those terms are defined pursuant to
24 section 3 of P.L.1975, c.217 (C.52:27D-121), including the footprint
25 of the building or structure and an area extending 300 feet in all
26 directions of the footprint, but in no event shall the area exceed the lot
27 upon which the building or structure is situated;

28 (2) A permanent foundation or footing including the footprint of the
29 foundation or footing, and an area extending 300 feet in all directions
30 of the footprint, but in no event shall the area exceed the lot upon
31 which the foundation or footing is situated;

32 (3) Concrete or asphalt pavement other than a pedestrian walkway,
33 including the footprint of the pavement, and an area extending 300 feet
34 in all directions of the footprint, but in no event shall the area exceed
35 the lot upon which the pavement is situated; or

36 (4) Any area covered by paving blocks, gravel, crushed stone, or
37 maintained lawn within 50 feet of the development listed 1 through 3
38 above, except that such 50-foot envelope shall not be applicable to a
39 paved road, or utility or railroad right-of-way.

40 The term "previously developed site" shall include the area that
41 extends to the perimeter defined by any of the site features, other than
42 roads, listed in (1) through (3) that lies within 300 feet of another site
43 feature, plus an additional 300 feet beyond the perimeter so defined
44 but not beyond the block and lot; and

45 "Smart growth area" means an area designated pursuant to
46 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1

1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or
2 a designated growth center in an endorsed plan; a smart growth area
3 and planning area designated in a master plan adopted by the New
4 Jersey Meadowlands Commission pursuant to subsection (i) of section
5 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the
6 Comprehensive Management Plan prepared and adopted by the
7 Pinelands Commission pursuant to section 7 of the "Pinelands
8 Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise
9 zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.);
10 an area determined to be in need of redevelopment pursuant to
11 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and
12 as approved by the Department of Community Affairs; a previously
13 developed site; or similar areas designated by the Department of
14 Environmental Protection.

15

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

24

25 13. a. There is hereby established within the Office of
26 Administrative Law a Smart Growth Unit consisting of administrative
27 law judges having expertise in the matters heard pursuant to this
28 section. All cases transmitted to the Office of Administrative Law
29 pursuant to this section shall be assigned to and adjudicated by the
30 administrative law judges in the Smart Growth Unit.

31 b. The Governor with the advice and consent of the Senate shall
32 appoint administrative law judges to the Smart Growth Unit.
33 Administrative law judges appointed to the Smart Growth Unit shall
34 have expertise in the relevant subject areas pursuant to P.L. , c.
35 (C.) (before the Legislature as this bill) and shall be subject to
36 the terms of appointment and employment set forth in sections 4 and
37 5 of P.L.1978, c.67 (C.52:14F-4) and (C.52:14F-5). The director shall
38 assign an administrative law judge as the assignment judge for the unit.

39

40 14. a. Within 15 days after the receipt by the agency of notice of
41 an applicant's request for an expedited review pursuant to paragraph
42 (4) of subsection c. of section 5, 7 or 9 of P.L. , c. (C.)
43 (pending before the Legislature as this bill), as appropriate, the agency
44 shall transmit to the clerk of the Office of Administrative Law the
45 administrative record which shall consist of:

46 (1) the application;

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

2 (3) the qualified expert's certification that the application is
3 complete and meets all statutory and regulatory requirements for
4 approval;

5 (4) the division's notices of deficiency, if any, that the application
6 is incomplete;

7 (5) the division's documentation, if any, in support of its
8 determination that the application is incomplete; and

9 (6) the applicant's request for a hearing and decision expedited
10 review.

11 b. The case shall be assigned to an Administrative Law Judge who
12 shall be a member of the Smart Growth Unit. Within 15 days after the
13 filing of the case with the clerk of the Office of Administrative Law,
14 the parties shall file briefs with the Administrative Law Judge. There
15 shall be no presumptions in favor of either party. No other evidence
16 shall be admitted and/or relied upon, except by consent of the parties
17 and with approval of the Administrative Law Judge. Discovery shall
18 not be available, except by consent of the parties. The standard of
19 review shall be by the preponderance of the evidence.

20 c. Within 30 days after the date of submission of the briefs, the
21 Administrative Law Judge shall issue a written decision as to whether
22 the application is complete. The time limits established herein shall
23 not be extended except by consent of the parties.

24 d. If the Administrative Law Judge decides that the application is
25 complete, the agency shall take action to approve, approve with
26 conditions or deny the permit application within 45 days after the
27 receipt of the decision.

28 e. The decision of the Administrative Law Judge on the issue of
29 completeness of the application shall be the final decision binding on
30 the parties and shall not be subject to further review or appeal by
31 either the Division of Smart Growth established pursuant to sections
32 5, 7 or 9 of P.L. , c. (C.) (pending in the Legislature as this
33 bill), as appropriate, or the applicant.

34 f. An applicant who does not request for expedited review pursuant
35 to paragraph (4) of subsection c. of section 5, 7 or 9 of P.L. , c.
36 (C.) (pending before the Legislature as this bill) retains the right
37 to an administrative hearing and decision on the permit application
38 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.).

40

41 15. a. If an application for a permit for a proposed project in a
42 smart growth area is denied, the Office of Administrative Law shall
43 provide an expedited hearing to review the denial of the permit upon
44 the request of the applicant. An applicant who does not request a
45 hearing pursuant to this section retains the right to an administrative
46 hearing and decision on the permit application pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 b. Within 15 days after receipt by the division of notice of an
4 applicant's request for an expedited hearing, the division shall transmit
5 to the clerk of the Office of Administrative Law the administrative
6 record which shall consist of:

7 (1) the application;

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

9 (3) the qualified expert's certification that the application is
10 complete and meets all statutory and regulatory requirements for
11 approval;

12 (4) the division's notices of deficiency, if any, that the application
13 is incomplete;

14 (5) the division's documentation, if any, in support of its
15 determination to deny the application; and

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

17 c. The case shall be assigned to an Administrative Law Judge who
18 shall be a member of a Smart Growth Unit. The Administrative Law
19 Judge shall establish an expedited briefing and hearing schedule. Any
20 hearings shall be concluded within 45 days after receipt of the case by
21 the Administrative Law Judge.

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

27 e. Within 45 days after the closing of the record, the
28 Administrative Law Judge shall issue a written decision as to whether
29 the applicant has satisfied the standards required for the permit. The
30 time limits established herein shall not be extended except by consent
31 of the parties and the Administrative Law Judge.

32 f. If the Administrative Law Judge decides that the application
33 should be approved, the division shall take action to approve or
34 approve with conditions the permit within 10 days after receipt of the
35 decision.

36 g. The decision of the Administrative Law Judge shall be the final
37 decision binding on the parties and shall not be subject to further
38 review or appeal by either the Division of Smart Growth established
39 pursuant to sections 5, 7 or 9 of P.L. , c. (C.) (pending in
40 the Legislature as this bill), as appropriate, or the applicant.

41
42 16. a. If an application for a permit for a proposed project in a
43 smart growth area is approved with terms or conditions, the Office of
44 Administrative Law shall provide an expedited hearing and decision on
45 any terms or conditions of such permit upon the request of the
46 applicant. An applicant who does not request an expedited hearing

1 pursuant to this section retains the right to an administrative hearing
2 and decision on the permit application pursuant to the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

4 b. Within 15 days after receipt by the agency of notice of an
5 applicant's request for an expedited hearing and decision, the agency
6 shall transmit to the clerk of the Office of Administrative Law the case
7 record which shall consist of:

8 (1) the application;

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

10 (3) the qualified expert's certification that the application is
11 complete and meets all statutory and regulatory requirements for
12 approval;

13 (4) the division's notices of deficiency, if any, that the application
14 is incomplete;

15 (5) the division's documentation, if any, in support of its
16 determination to include the terms or conditions that are being
17 contested; and

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

19 c. The case shall be assigned to an Administrative Law Judge who
20 shall be a member of a Smart Growth Unit. The Administrative Law
21 Judge shall establish an expedited briefing and hearing schedule. Any
22 hearings shall be concluded within 45 days after receipt of the case by
23 the Administrative Law Judge.

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

29 e. Within 45 days after the closing of the record, the
30 Administrative Law Judge shall issue a written decision as to whether
31 the applicant has satisfied the standards required for the permit. The
32 time limits established herein shall not be extended except by consent
33 of the parties and the Administrative Law Judge.

34 f. If the Administrative Law Judge decides that a permit condition
35 or term should be deleted or amended, the division shall take action to
36 revise the terms or conditions of the permit within 10 days after
37 receipt of the decision.

38 g. The decision of the Administrative Law Judge shall be the final
39 decision binding on the parties and shall not be subject to further
40 review or appeal by either the Division of Smart Growth established
41 pursuant to sections 5, 7 or 9 of P.L. , c. (C.) (pending in
42 the Legislature as this bill), as appropriate, or the applicant.

43
44 17. The Office of Administrative Law shall have authority to
45 establish filing fees, payable by the applicant, necessary to administer
46 the Smart Growth Unit, including the direct and indirect costs for

1 personnel, operating expenses, equipment and activities of the Smart
2 Growth Unit. These filing fees shall be published in the New Jersey
3 Register and shall be effective upon publication therein.

4
5 18. The Office of Administrative Law may adopt those rules and
6 regulations that it deems necessary to carry out the requirements of
7 P.L. , c. (C.) (pending before the Legislature as this bill),
8 which shall be effective upon filing.

9
10 19. This act shall take effect immediately.

11
12
13 STATEMENT

14
15 This bill: establishes a Smart Growth Ombudsman in the
16 Department of Community Affairs to be appointed by, serve at the
17 pleasure of, and report to the Governor; establishes a Division of
18 Smart Growth in the Department of Environmental Protection, the
19 Department of Transportation, and the Department of Community
20 Affairs; provides for the expediting of certain State permits in smart
21 growth areas; provides for the creation of expedited permit
22 mechanisms, such as a permits-by-rule, general permits, and
23 certification by professionals qualified and registered in accordance
24 with the provisions of the bill, in smart growth areas as determined
25 appropriate by the Commissioner of Environmental Protection, the
26 Commissioner of Transportation or the Commissioner of Community
27 Affairs, as appropriate, after consultation with the Smart Growth
28 Ombudsman; specifies the creation of specified permits-by-rule and
29 general permits; and establishes a Smart Growth Unit within the Office
30 of Administrative Law.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3008

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Assembly Housing and Local Government Committee reports favorably a committee substitute for Assembly Bill No. 3008.

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

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

The committee substitute would also establish a Division of Smart Growth in the Department of Environmental Protection, the Department of Transportation, and the Department of Community

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

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

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

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

decision on a permit decision pursuant to the current procedure established by the "Administrative Procedure Act," (APA) P.L.1968, c.410 (C.52:14B-1 et seq.).

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

This committee substitute is identical to Senate Committee Substitute for Senate Bill No. 1368.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3008
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JULY 2, 2004

SUMMARY

Synopsis: Streamlines certain permitting in smart growth areas.
Type of Impact: Initial expenditures from the General Fund.
Agencies Affected: Departments of Community Affairs, Environmental Protection, and Transportation; Office of Administrative Law

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate -- see comments below		
State Revenue			

- ! The bill creates new administrative units to coordinate and oversee a process for expediting the review and approval of certain building-related, State-issued permits in designated smart growth areas, excluding the "preservation area" of the Highlands Region.
- ! A Smart Growth Ombudsman in the Department of Community Affairs would be appointed by the Governor to expedite and participate in permit decisions, and review new rules to determine consistency with the State Development and Redevelopment Plan.
- ! The bill provides that the costs of the new administrative units be funded through special fees charged to applicants who wish to participate in the expedited permit process in the smart growth areas designated by the bill.
- ! The Office of Legislative Services (OLS) cannot estimate whether the new fee revenues authorized by the bill will be sufficient to cover all new administrative costs, which are also uncertain. The OLS does estimate, however, that until adequate fee revenues are generated, State appropriations will be needed in the first and possibly the second year of the program to support its expenses.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 3008 of 2004 establishes a Smart Growth Ombudsman in the Department of Community Affairs, a Division of Smart Growth in

the Department of Environmental Protection, the Department of Transportation, and the Department of Community Affairs, and a Smart Growth Unit within the Office of Administrative Law. These new units are established to coordinate and oversee a process for expediting the review and approval of certain building-related, State-issued permits in designated smart growth areas, excluding the "preservation area" of the Highlands Region.

The Smart Growth Ombudsman and the three Smart Growth division directors are to be appointed by the Governor. The Smart Growth Ombudsman's responsibilities include: (1) making recommendations concerning ways to expedite permit decisions; (2) participating, if needed, in the permit application and review process to ensure compliance with the expedited time frames established in the bill; (3) maintaining an informational website; and (4) reviewing any new rules or regulations proposed by any State agency to determine whether they are consistent with the State Development and Redevelopment Plan. The new Divisions of Smart Growth are created to expedite certain State permits in smart growth areas and provide for the creation of expedited permit mechanisms, such as permits-by-rule and general permits.

The costs of the three new divisions and the Smart Growth Ombudsman would be funded solely through special fees charged to applicants who wish to participate in the expedited permit process in the smart growth areas designated by the bill. Last, the bill establishes a Smart Growth Unit in the Office of Administrative Law to expedite review of expedited permit decisions. This unit's costs would also be covered by filing fees assessed to permit applicants.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that there is insufficient data to determine at this point in time whether the bill's intention of having expedited permit filing fees support any and all new costs associated with its implementation will meet this objective. In any case, it would probably take one or two years after enactment to generate adequate revenue balances to support such costs, which could range from \$1 million to \$2 million (or more) depending on the number of staff required to meet program needs. In the meantime, State appropriations from the General Fund would be required to cover all such costs.

The OLS estimate is roughly based on the potential salary costs (including benefits) of three division directors, an ombudsman, an administrative law judge, their staffs, and nonsalary support expenses. Even if current staff are transferred to fill some of these positions, new replacement staff will eventually have to be hired. Ultimately, the level of program activity will determine the level of staff requirements and costs.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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

Office of the Governor

PO BOX 004
TRENTON, NJ 08625

News Releases

Contact: Micah Rasmussen
609-777-2600

RELEASE: July 09, 2004

[Previous Screen](#)

Governor McGreevey Signs Smart Growth Bill

S1368 Encourages Redevelopment Without Compromising Environmental Standards

(TRENTON) – Governor James E. McGreevey today signed S1368, which provides regulatory relief for development and redevelopment in smart growth areas, consistent with the State Plan. The Act cuts bureaucratic red tape by providing expedited permit processing in smart growth areas. However, the Act does not change the standards for approving or denying permits nor does it repeal or replace current opportunities for public participation in the permitting process. The Act requires agencies take timely action on a permit application and provides that implementation cannot be done in such a way as to modify any requirement necessary for the State to retain federal authority to implement a federal law or program.

The Act also creates a Smart Growth Ombudsman to coordinate the smart growth efforts of the Divisions of Smart Growth in the Departments of Environmental Protection, Transportation and Community Affairs in implementing this initiative.

Governor McGreevey made the following statement regarding the bill:

“From the protection of our air to the cleanliness of the water, my Administration has set a national standard for environmental protection.

“We have preserved tens of thousands of acres of open space, put 300 foot buffers around our water supply, and instituted unprecedented measures to place our reservoirs and streams off-limits to over-development.

“As part of our effort to protect New Jersey's environment, we have also invested tens of millions of dollars in brownfields to turn abandoned industrial sites into engines of job growth and economic development.

“The effort to promote re-development and the right kind of development is critical to our

economy but also to the protection of pristine and sensitive environmental areas.

“This legislation will compliment our other initiatives. It will ensure that any proposed development will still meet our strong environmental standards but it will eliminate the excessive bureaucracy and red tape that mires down too many worthwhile projects.

“Now, led by Commissioners Campbell, Levin and Lettiere, my administration will work to ensure that the implementation of this legislation is consistent with the goals and principles that we have established.”

State of New Jersey Governor's Office

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