

LEGISLATIVE HISTORY CHECKLIST
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(Freshwater Wetlands Preservation Act)

NJSA: 13:9B-1 to 13:9B-30

LAWS OF: 1987 CHAPTER: 156

BILL NO: A2342/A2499

SPONSOR(S): Penn and Others

DATE INTRODUCED: May 8, 1986

COMMITTEE: ASSEMBLY: Energy & Natural Resources

SENATE: Energy & Environment

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SENATE: June 29, 1987

DATE OF APPROVAL: July 1, 1987

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes (this message is poor quality, but it is the only copy available)

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

974.90 New Jersey. Legislature. Assembly. Energy and Natural Resources
R336 Committee.
1986 Public hearing, held 7-16-86, 7-30-86 and 8-1-86, New Brunswick, Lincoln Park, Mt. Holly, NJ, 1986.

(over)

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R ~~336~~ 336 Committee.
1986 Public hearing, held 7-16-86, 7-30-86 and 8-1-86, New
Brunswick, Lincoln Park, Mt. Holly, N.J., 1986.

Earlier hearings and reports on wetlands:

974.90 New Jersey. Legislature. Assembly. Committee on Agriculture and
R 336 Environment.
1984 Public hearing on A.672 and A.2348, held 9-24-84. Trenton,
1984.

See newspaper clipping file, "New Jersey--Wetlands--1984, 1985, 1986 and 1987" in
New Jersey Reference Department. 118 N.J.L.J. 432 (1986)
"Wetlands regulation: a call for balance"

Bryan, "Letter to the editor...disagreeing with editorial of October 2, 1986" 118 N.J.L.J. 648 (1986)

Goldshore and Wolf, "Freshwater wetlands moratorium (editorial)" 119 N.J.L.J. 1080 (1987)

CHAPTER 156 LAWS OF N. J. 1987
APPROVED 7/1/87

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SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY Nos. 2342 and 2499

STATE OF NEW JERSEY

ADOPTED JUNE 15, 1987

AN ACT concerning the regulation of freshwater wetlands, amending P. L. 1977, c. 74, supplementing Title 13 of the Revised Statutes, and making appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Freshwater
2 Wetlands Protection Act."

1 2. The Legislature finds and declares that freshwater wetlands
2 protect and preserve drinking water supplies by serving to purify
3 surface water and groundwater resources; that freshwater wet-
4 lands provide a natural means of flood and storm damage protec-
5 tion, and thereby prevent the loss of life and property through the
6 absorption and storage of water during high runoff periods and
7 the reduction of flood crests; that freshwater wetlands serve as a
8 transition zone between dry land and water courses, thereby re-
9 tarding soil erosion; that freshwater wetlands provide essential
10 breeding, spawning, nesting, and wintering habitats for a major
11 portion of the State's fish and wildlife, including migrating birds,
12 endangered species, and commercially and recreationally important
13 wildlife; and that freshwater wetlands maintain a critical baseflow
14 to surface waters through the gradual release of stored flood waters
15 and groundwater, particularly during drought periods.

16 The Legislature further finds and declares that while the State
17 has acted to protect coastal wetlands, it has not, except indirectly,
18 taken equally vigorous action to protect the State's inland water-
19 ways and freshwater wetlands; that in order to advance the public
20 interest in a just manner the rights of persons who own or possess
21 real property affected by this act must be fairly recognized and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate amendments adopted June 25, 1987.

22 balanced with environmental interests; and that the public benefits
23 arising from the natural functions of freshwater wetlands, and the
24 public harm from freshwater wetland losses, are distinct from
25 and may exceed the private value of wetland areas.

26 The Legislature therefore determines that in this State, where
27 pressures for commercial and residential development define the
28 pace and pattern of land use, it is in the public interest to establish
29 a program for the systematic review of activities in and around
30 freshwater wetland areas designed to provide predictability in the
31 protection of freshwater wetlands: that it shall be the policy of the
32 State to preserve the purity and integrity of freshwater wetlands
33 from random, unnecessary or undesirable alteration or distur-
34 bance: and that to achieve these goals it is important that the State
35 expeditiously assume the freshwater wetlands permit jurisdiction
36 currently exercised by the United States Army Corps of Engineers
37 pursuant to the Federal Act and implementing regulations.

1 3. As used in this act:

2 "Bank" means the Wetlands Mitigation Bank established pur-
3 suant to section 14 of this act;

4 "Commissioner" means the Commissioner of the Department
5 of Environmental Protection;

6 "Council" means the Wetlands Mitigation Council established
7 pursuant to section 14 of this act;

8 "Department" means the Department of Environmental Pro-
9 tection;

10 "Environmental commission" means a municipal advisory body
11 created pursuant to P. L. 1968, c. 245 (C. 40:56A-1 et seq.):

12 "Federal Act" means section 404 of the "Federal Water Pollu-
13 tion Control Act Amendments of 1972" as amended by the "Clean
14 Water Act of 1977" (33 U. S. C. § 1344) and the regulations
15 adopted pursuant thereto;

16 "Freshwater wetland" means an area that is inundated or satu-
17 rated by surface water or groundwater at a frequency and duration
18 sufficient to support, and that under normal circumstances does
19 support, a prevalence of vegetation typically adapted for life in
20 saturated soil conditions, commonly known as hydrophytic vegeta-
21 tion; provided, however, that the department, in designating a wet-
22 land, shall use the 3-parameter approach (i.e. hydrology, soils and
23 vegetation) enumerated in the April 1, 1987 interim-final draft
24 "Wetland Identification And Delineation Manual" developed by
25 the United States Environmental Protection Agency, and any sub-
26 sequent amendments thereto:

27 "Freshwater wetlands permit" means a permit to engage in a
28 regulated activity issued pursuant to this act:

29 "Hydrophyte" means plant life adapted to growth and repro-
30 duction under periodically saturated root zone conditions during
31 at least a portion of the growing season:

32 "Linear development" means land uses such as roads, drives,
33 railroads, sewerage and stormwater management pipes, gas and
34 water pipelines, electric, telephone and other transmission lines
35 and the rights-of-way therefor, the basic function of which is to
36 connect two points. Linear development shall not mean residential,
37 commercial, office, or industrial buildings:

38 "Person" means an individual, corporation, partnership, asso-
39 ciation, the State, municipality, commission or political subdivision
40 of the State or any interstate body;

41 "Regulated activity" means any of the following activities in a
42 freshwater wetland:

43 (1) The removal, excavation, disturbance or dredging of soil,
44 sand, gravel, or aggregate material of any kind:

45 (2) The drainage or disturbance of the water level or water table;

46 (3) The dumping, discharging or filling with any materials;

47 (4) The driving of pilings;

48 (5) The placing of obstructions;

49 (6) The destruction of plant life which would alter the character
50 of a freshwater wetland, including the cutting of trees:

51 "Transition area" means an area of land adjacent to a fresh-
52 water wetland which minimizes adverse impacts on the wetland or
53 serves as an integral component of the wetlands ecosystem.

1 4. The following are exempt from the requirement of a fresh-
2 water wetlands permit and transition area requirements unless
3 the United States Environmental Protection Agency's regulations
4 providing for the delegation to the state of the federal wetlands
5 program conducted pursuant to the Federal Act require a permit
6 for any of these activities, in which case the department shall re-
7 quire a permit for those activities so identified by that agency:

8 a. Normal farming, silviculture, and ranching activities such as
9 plowing, seeding, cultivating, minor drainage, harvesting for the
10 production of food and fiber, or upland soil and water conserva-
11 tion practices; construction or maintenance of farm or stock ponds
12 or irrigation ditches, or the maintenance of drainage ditches; con-
13 struction or maintenance of farm roads or forest roads constructed
14 and maintained in accordance with best management practices to
15 assure that flow and circulation patterns and chemical and bio-

16 logical characteristics of freshwater wetlands are not impaired
 17 and that any adverse effect on the aquatic environment will be
 18 minimized;

19 b. Normal harvesting of forest products in accordance with a
 20 forest management plan approved by the State Forester;

21 c. Areas regulated as a coastal wetland pursuant to P. L. 1970,
 22 c. 272 (C. 13:9A-1 et seq.)*[.]* *;*

23 d. Projects for which (1) preliminary site plan or subdivision
 24 applications have received preliminary approvals from the local
 25 authorities pursuant to the "Municipal Land Use Law," P. L.
 26 1975, c. 291 (C. 40:55D-1 et seq.) prior to the effective date of
 27 this act, (2) preliminary site plan or subdivision applications have
 28 been submitted prior to June 9, 1957, or (3) permit applications
 29 have been approved by the U. S. Army Corps of Engineers prior
 30 the effective date of this act, which projects would otherwise be
 31 subject to State regulation on or after the effective date of this
 32 act, shall be governed only by the Federal Act, and shall not be
 33 subject to any additional or inconsistent substantive requirements
 34 of this act*[.]* *;* provided, however, that upon the expiration of
 35 a permit issued pursuant to the Federal Act any application for a
 36 renewal thereof shall be made to the appropriate regulatory
 37 agency. **The department shall not require the establishment of a*
 38 *transition area as a condition of any renewal of a permit issued*
 39 *pursuant to the Federal Act prior to the effective date of this act.**
 40 Projects not subject to the jurisdiction of the United States Army
 40a Corps of Engineers and for which preliminary site or subdivision
 40b applications have been approved prior to the effective date of this
 40c act shall not require transition areas*[.]* *;*

41 e. The exemptions in subsections a. and b. of this section shall
 42 not apply to any discharge of dredged or fill material into a fresh-
 43 water wetland incidental to any activity which involves bringing
 44 an area of freshwater wetlands into a use to which it was not
 45 previously subject, where the flow or circulation patterns of the
 46 waters may be impaired, or the reach of the waters is reduced.

1 5. a. The department shall consolidate the processing of wet-
 2 lands related aspects of other regulatory programs which affect
 3 activities in freshwater wetlands, including, but not limited to,
 4 sewer extension approvals required pursuant to P. L. 1977, c. 74
 5 (C. 58:10A-1 et seq.), permits required pursuant to P. L. 1973,
 6 c. 185 (C. 13:19-1 et seq.), and any permits and approvals re-
 7 quired pursuant to P. L. 1977, c. 75 (C. 58:11A-1 et seq.) and P. L.
 8 1962, c. 19 (C. 58:16A-50 et seq.), with the freshwater wetlands

9 permit process established herein so as to provide a timely and
10 coordinated permit process consistent with the Federal Act.

11 b. Within 60 days after the department receives comment on a
12 complete application for a permit from the United States Environ-
13 mental Protection Agency, or upon receipt of notice from the
14 United States Environmental Protection Agency that no comment
15 will be forthcoming, the department may hold a public hearing on
16 the application for a permit. If such a hearing is held, it shall
17 be in the county wherein the freshwater wetland is located when-
18 ever practicable. The department may issue or deny a permit
19 without a public hearing, unless there is a significant degree of
20 public interest in the application as manifested by written re-
21 quests for a hearing within 20 days after the publication of notice
22 of the permit application in the Bulletin of the department.

23 c. The department shall issue or deny a permit within 90 days
24 of receipt of comments, or notice that comments will not be forth-
25 coming, from the United States Environmental Protection Agency,
26 or within 180 days of submittal of a complete application, which-
27 ever is later. **Until the State assumes the implementation of the*
28 *Federal Act, the department shall issue or deny a permit within*
29 *180 days of submittal of a complete application, except as may*
30 *otherwise be provided by the Federal Act.** The department shall
31 review an application for a permit for completeness, and make any
32 necessary requests for further information, within 30 days of
33 receipt of the application for a permit: provided, however, that
34 this deadline shall not apply to requests for further information
35 made by the department on the basis of comments received from
36 the United States Environmental Protection Agency. If the depart-
37 ment issues the permit, the department shall send notice thereof
38 to the applicant. If the department denies, or requests a modifica-
39 tion of, the complete permit application, the department shall send
39A notice thereof to the applicant. The department may issue a permit
39B imposing conditions necessary for compliance with this act and the
39C "Water Pollution Control Act," P. L. 1977, c. 74 (C. 5S:10A-1
39D et seq.).

40 d. The fees authorized pursuant to sections 8, 9, and 17 of this
41 act shall be dedicated to further the specific purposes of this act.

1 6. a. Activities in areas under the jurisdiction of the Hacken-
2 sack Meadowlands Development Commission pursuant to P. L.
3 1968, c. 404 (C. 13:17-1 et seq.) shall not require a freshwater
4 wetlands permit, or be subject to transition area requirements,
5 except that the discharge of dredged or fill material shall require

29 subsection a. of this section, and which are certain isolated wet-
30 lands, man-made drainage ditches, swales, or detention facilities.

31 c. Freshwater wetlands of intermediate resource value shall be
32 all freshwater wetlands not included in subsections a. or b. of this
33 section.

34 d. As used in this section "threatened or endangered species"
35 shall be those species identified pursuant to "The Endangered
36 and Nongame Species Conservation Act," P. L. 1973, c. 309 (C.
37 23:2A-1 et seq.) or which appear on the federal endangered species
38 list, and "FW-1, FW-2, trout production (TP) waters" shall
39 mean those waters delineated as such by the department under
40 regulations adopted pursuant to the "Water Pollution Control
41 Act," P. L. 1977, c. 74 (C. 58:10A-1 et seq.) and the "Water
42 Quality Planning Act," P. L. 1977, c. 75 (C. 58:11A-1 et seq.).

43 e. The classification system established in this section shall not
44 restrict the department's authority to require the creation or
45 restoration of freshwater wetlands pursuant to the provisions of
46 section 13 of this act.

1 8. a. A person proposing to engage in a regulated activity in a
2 freshwater wetland or in an activity which requires a transition
3 area waiver may, prior to applying for a freshwater wetlands
4 permit or transition area waiver, request from the department a
5 letter of interpretation to establish that the site of the proposed
6 activity is located in a freshwater wetland or transition area.

7 b. Within 20 days after receipt of a request for a letter of inter-
8 pretation, the department may require the submission of any addi-
9 tional information necessary to issue the letter of interpretation.

10 c. If no additional information is required, the department shall
11 issue a letter of interpretation within 30 days after receiving the
12 request.

13 d. If additional information is required the department shall
14 issue a letter of interpretation within 45 days after receipt of the
15 information.

16 e. The department may require an applicant for a letter of
17 interpretation to perform and submit to the department an onsite
18 inspection to determine or verify the general location of the fresh-
19 water wetland boundary and the applicable transition area. This
20 inspection shall be subject to approval and verification by the
21 department. If the department determines that onsite inspection
22 by the department is necessary, the department shall make the
23 inspection. If an on-site inspection is required by the department
24 the time specified in this section for issuance of the letter of inter-
25 pretation shall be extended by 45 days.

26 f. If a person requesting the letter has not made a reasonable
27 good faith effort to provide the department with information suffi-
28 cient to make a determination, the department shall issue a letter
29 of interpretation requiring the application for a freshwater wet-
30 lands permit or transition area waiver.

31 g. A person applying for a letter of interpretation may also
32 submit a report of an onsite freshwater wetlands delineation and
33 receive within the time specified in this section a letter of inter-
34 pretation verifying the actual freshwater wetlands and transition
35 area boundaries.

36 h. The department may charge a fee not to exceed the costs for
37 reviewing the information submitted, conducting on-site inspec-
38 tions pursuant to subsection e. of this section, and for issuing a
39 letter of interpretation.

40 i. Any person who requests a letter of interpretation pursuant
41 to the provisions of this act and does not receive a response from
42 the department within the deadlines imposed in this section shall
43 not be entitled to assume that the site of the proposed activity
44 which was the subject of the request for a letter of interpretation
45 is not in a freshwater wetland. A person who receives a letter of
46 interpretation pursuant to this section shall be entitled to rely on
47 the determination of the department, except as provided in sub-
48 section j. of this section.

49 j. The department shall transmit to the United States Environ-
50 mental Protection Agency a copy of any letter of interpretation
51 determining that the site of a proposed regulated activity is not
52 in a freshwater wetland. Any letter of interpretation which deter-
53 mines that the site of a proposed regulated activity is not in a
54 freshwater wetlands shall be subject to review, modification, or
55 revocation by the United States Environmental Protection Agency.

56 **k. The department shall publish in the bulletin of the depart-*
57 *ment a list indicating the status of each application for a permit*
58 *submitted to the department pursuant to the provisions of this act.**

1 9. a. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for a
3 fee not to exceed the cost of reviewing and processing the applica-
4 tion, and on forms and in the manner prescribed by the commis-
5 sioner pursuant to the "Administrative Procedure Act," P. L.
6 1968, c. 410 (C. 52:14B-1 et seq.). An agency of the State pro-
7 posing to engage in a regulated activity shall also apply to the
8 department for a freshwater wetlands permit on forms and in a
9 manner prescribed by the commissioner, but shall not be required
10 to pay a fee therefor. The application shall include the name and

11 address of the applicant, the purpose of the project, the names and
12 addresses of all owners of property adjacent to the proposed
13 project, and at least the following :

14 (1) A preliminary site plan or subdivision map of the proposed
15 development activities, or another map of the site if no preliminary
16 site plan or subdivision map exists, and a written description of
17 the proposed regulated activity, the total area to be modified, and
18 the total area of the freshwater wetland potentially affected;

19 (2) Verification that a notice has been forwarded to the clerk,
20 environmental commission, and planning board of the municipality
21 in which the proposed regulated activity will occur, the planning
22 board of the county in which the proposed regulated activity will
23 occur, landowners within 200 feet of the site of the proposed regu-
24 lated activity, and to all persons who requested to be notified of
25 proposed regulated activities, which notice may be filed concu-
26 rently with notices required pursuant to P. L. 1975, c. 291 (C.
27 40:55D-1 et seq.), describing the proposed regulated activity and
28 advising these parties of their opportunity to submit comments
29 thereon to the department:

30 (3) Verification that notice of the proposed activity has been
31 published in a newspaper of local circulation.

32 (4) A statement detailing any potential adverse environmental
33 effects of the regulated activity and any measures necessary to
34 mitigate those effects, and any information necessary for the de-
35 partment to make a finding pursuant to subsection b. of this section.

36 b. The department, after considering the comments of the en-
37 vironmental commission and planning boards of the county and
38 municipality wherein the regulated activity is to take place, federal
39 and State agencies of competent jurisdiction, other affected mu-
40 nicipalities and counties, and the general public, shall issue a
41 freshwater wetlands permit only if it finds that the regulated
42 activity:

43 (1) Is water-dependent or requires access to the freshwater wet-
44 lands as a central element of its basic function, and has no prac-
45 ticable alternative which would not involve a freshwater wetland
46 or which would have a less adverse impact on the aquatic eco-
47 system, and which would not have other significant adverse en-
48 vironmental consequences, and also complies with the provisions
49 of paragraphs 3-9 of this subsection; or

50 (2) Is nonwater-dependent and has no practicable alternative
51 as demonstrated pursuant to section 10 of this act, which would
52 not involve a freshwater wetland or which would have a less
53 adverse impact on the aquatic ecosystem, and which would not

54 have other significant adverse environmental consequences; and
55 (3) Will result in minimum feasible alteration or impairment
56 of the aquatic ecosystem including existing contour, vegetation, fish
57 and wildlife resources, and aquatic circulation of the freshwater
58 wetland; and

59 (4) Will not jeopardize the continued existence of species listed
60 pursuant to "The Endangered and Nongame Species Conserva-
61 tion Act," P. L. 1973, c. 309 (C. 23:2A-1 et seq.) or which appear
62 on the federal endangered species list, and will not result in the
63 likelihood of the destruction or adverse modification of a habitat
64 which is determined by the Secretary of the United States Depart-
65 ment of the Interior or the Secretary of the United States De-
66 partment of Commerce as appropriate to be a critical habitat under
67 the "Endangered Species Act of 1973," (16 U. S. C. § 1531 et al.);
68 and

69 (5) Will not cause or contribute to a violation of any applicable
70 State water quality standard; and

71 (6) Will not cause or contribute to a violation of any applicable
72 toxic effluent standard or prohibition imposed pursuant to the
73 "Water Pollution Control Act," P. L. 1977, c. 74 (C. 58:10A-1
74 et seq.); and

75 (7) Will not violate any requirement imposed by the United
76 States government to protect any marine sanctuary designated
77 pursuant to the "Marine Protection, Research and Sanctuaries
78 Act of 1972," (33 U. S. C. § 1401 et al.); and

79 (8) Will not cause or contribute to a significant degradation of
80 ground or surface waters; and

81 (9) Is in the public interest as determined pursuant to section
82 11 of this act, is necessary to realize the benefits derived from the
83 activity, and is otherwise lawful.

1 10. a. It shall be a rebuttable presumption that there is a prac-
2 ticable alternative to any nonwater-dependent regulated activity
3 that does not involve a freshwater wetland, and that such an
4 alternative to any regulated activity would have less of an impact
5 on the aquatic ecosystem. An alternative shall be practicable if
6 it is available and capable of being carried out after taking into
7 consideration cost, existing technology, and logistics in light of
8 overall project purposes, and may include an area not owned by
9 the applicant which could reasonably have been or be obtained,
10 utilized, expanded, or managed in order to fulfill the basic pur-
11 pose of the proposed activity.

12 b. In order to rebut the presumption established in subsection a.
13 of this section an applicant for a freshwater wetlands permit must
14 demonstrate the following

15 (1) That the basic project purpose cannot reasonably be ac-
16 complished utilizing one or more other sites in the general region
17 that would avoid, or result in less, adverse impact on an aquatic
18 ecosystem; and

19 (2) That a reduction in the size, scope, configuration, or density
20 of the project as proposed and all alternative designs to that of
21 the project as proposed that would avoid, or result in less, adverse
22 impact on an aquatic ecosystem will not accomplish the basic pur-
23 pose of the project; and

24 (3) That in cases where the applicant has rejected alternatives
25 to the project as proposed due to constraints such as inadequate
26 zoning, infrastructure, or parcel size, the applicant has made
27 reasonable attempts to remove or accommodate such constraints.

28 c. In order to rebut the presumption established in subsection a.
29 of this section with respect to wetlands of exceptional resource
30 value, an applicant, in addition to complying with the provisions
31 of subsection b. of this section, must also demonstrate that there
32 is a compelling public need for the proposed activity greater than
33 the need to protect the freshwater wetland that cannot be met by
34 essentially similar projects in the region which are under construc-
35 tion or expansion, or have received the necessary governmental
36 permits and approvals; or that denial of the permit would impose
37 an extraordinary hardship on the part of the applicant brought
38 about by circumstances peculiar to the subject property.

1 11. In determining whether a proposed regulated activity in any
2 freshwater wetland is in the public interest, the department shall
3 consider the following:

4 a. the public interest in preservation of natural resources and
5 the interest of the property owners in reasonable economic develop-
6 ment;

7 b. the relative extent of the public and private need for the pro-
8 posed regulated activity;

9 c. where there are unresolved conflicts as to resource use, the
10 practicability of using reasonable alternative locations and meth-
11 ods, including mitigation, to accomplish the purpose of the pro-
12 posed regulated activity;

13 d. the extent and permanence of the beneficial or detrimental
14 effects which the proposed regulated activity may have on the public
15 and private uses for which the property is suited:

16 e. the quality of the wetland which may be affected and the
17 amount of freshwater wetlands to be disturbed:

18 f. the economic value, both public and private, of the proposed
19 regulated activity to the general area; and

20 g. the ecological value of the freshwater wetlands and probable
21 impact on public health and fish and wildlife.

1 12. If a freshwater wetlands permit is approved and issued pur-
2 suant to the provisions of this act the department shall waive or
3 modify the requirement for a transition area to the extent required
4 to provide access to the site of the approved regulated activity.

1 13. a. The department shall require as a condition of a freshwater
2 wetlands permit that all appropriate measures have been carried
3 out to mitigate adverse environmental impacts, restore vegetation,
4 habitats, and land and water features, prevent sedimentation and
5 erosion, minimize the area of freshwater wetland disturbance and
6 insure compliance with the Federal Act and implementing regula-
7 tions.

8 b. The department may require the creation or restoration of an
9 area of freshwater wetlands of equal ecological value to those
10 which will be lost, and shall determine whether the creation or
11 restoration of freshwater wetlands is conducted onsite or offsite.
12 The department shall accept and evaluate a proposal to create or
13 restore an area of freshwater wetlands only after the department
14 has evaluated the permit application for which the proposal is
15 made, and shall evaluate the proposal to create or restore an area
16 of freshwater wetlands independently of the permit application.
17 The department's evaluation of a proposal to create or restore an
18 area of freshwater wetlands shall be conducted in consultation
19 with the United States Environmental Protection Agency.

20 c. If the department determines that the creation or restoration
21 of freshwater wetlands onsite is not feasible, the department, in
22 consultation with the United States Environmental Protection
23 Agency, may consider the option of permitting the creation of
24 freshwater wetlands or the restoration of degraded freshwater
25 wetlands offsite on private property with the restriction on these
26 wetlands of any future development, or the making of a contribu-
27 tion to the Wetlands Mitigation Bank. The contribution shall be
28 equivalent to the lesser of the following costs: (1) purchasing and
29 restoring existing degraded freshwater wetlands, resulting in pres-
30 ervation of freshwater wetlands of equal ecological value to those
31 which are being lost; or (2) purchase of property and the cost of
32 creation of freshwater wetlands of equal ecological value to those
33 which are being lost. The applicant may also donate land as part
34 of the contribution if the Wetlands Mitigation Council determines
35 that the donated land has potential to be a valuable component of
36 the freshwater wetlands ecosystem. The department shall permit

37 the donation of land as a part of the contribution to the Wetlands
38 Mitigation Bank only after determining that all alternatives to the
39 donation are not practicable or feasible.

1 14. a. There is established in the Executive Branch of State
2 Government the Wetlands Mitigation Bank. For the purpose of
3 complying with Article V, section IV, paragraph 1 of the New
4 Jersey Constitution, the bank is allocated within the Department
5 of Environmental Protection but, notwithstanding this allocation,
6 the bank shall be independent of any supervision or control by the
7 department or the commissioner, or any other officer or employee
8 thereof.

9 b. The bank shall be governed by the Wetlands Mitigation Council
10 which shall comprise seven members as follows: the Commissioner
11 of Environmental Protection, who shall serve ex officio; and
12 six members of the general public to be appointed by the Governor
13 with the advice and consent of the Senate, two of whom shall be
14 appointed from persons recommended by recognized building and
15 development organizations; two of whom shall be appointed from
16 persons recommended by recognized environmental and conservation
17 organizations; and two of whom shall be appointed from institutions
18 of higher learning in the State. Each of the members
19 appointed from the general public shall serve for a term of three
20 years and until a successor is appointed and qualified, except that
21 of the members first appointed, two shall serve terms of one year,
22 and two shall serve terms of two years. All vacancies, except those
23 created through the expiration of term, shall be filled for the unexpired
24 term only, and in the same manner, and with a member having
25 the same class, as the original appointment. Each member shall be
26 eligible for reappointment, but may be removed by the Governor for
27 cause.

28 c. A majority of the membership of the council shall constitute
29 a quorum for the transaction of council business. Action may be
30 taken and motions and resolutions adopted by the council at any
31 meeting thereof by the affirmative vote of a majority of the full
32 membership of the council.

33 d. The Governor shall appoint a chairman from the public members
34 and the council may appoint such other officers as may be
35 necessary. The council may appoint such staff or hire such experts
36 as it may require within the limits of appropriations made for
37 these purposes.

38 e. Members of the council shall serve without compensation, but
39 may be reimbursed for expenses necessarily incurred in the discharge
40 of their official duties.

41 f. The council may call to its assistance such employees as are
42 necessary and made available to it from any agency or department
43 of the State or its political subdivisions.

44 g. The council may adopt, pursuant to the "Administrative Pro-
45 cedure Act," and in consultation with the department, any rules
46 and regulations necessary to carry out its responsibilities.

1 15. a. The Wetlands Mitigation Council shall be responsible for
2 disbursements of funds from the bank to finance mitigation
3 projects. The council shall have the power to purchase land to
4 provide areas for the restoration of degraded freshwater wet-
5 lands, and to preserve freshwater wetlands and transition areas
6 determined to be of critical importance in protecting freshwater
7 wetlands. The council shall not engage in the restoration of de-
8 graded freshwater wetlands on public lands, except those lands
9 which are acquired by the bank. The council shall assist the de-
10 partment in preparing the portions of the report required pursu-
11 ant to section 29 of this act which pertains to mitigation.

12 b. The council may contract with nonprofit organizations, the
13 Division of Fish, Game and Wildlife in the department, the United
14 States Fish and Wildlife Service, and other appropriate agencies
15 to carry out its responsibilities, and may aggregate mitigation
16 actions to achieve economies of scale. Any contract proposed by
17 the council pursuant to this subsection shall be subject to review
18 and approval by the United States Environmental Protection
19 Agency.

20 c. The council may transfer any funds or lands restricted by
21 deed, easement or other appropriate means to mitigation and
22 freshwater wetlands conservation purposes, to a state or federal
23 conservation agency that consents to the transfer, to expand or
24 provide for:

- 25 (1) Freshwater wetlands preserves;
26 (2) Transition areas around existing freshwater wetlands to
27 preserve freshwater wetland quality;
28 (3) Future mitigation sites for freshwater wetlands restora-
29 tion; or
30 (4) Research to enhance the practice of mitigation.

1 16. a. There shall be transition areas adjacent only to fresh-
2 water wetlands of exceptional resource value and of intermediate
3 resource value. A transition area shall serve as:

- 4 (1) An ecological transition zone from uplands to freshwater
5 wetlands which is an integral portion of the freshwater wetlands
6 ecosystem, providing temporary refuge for freshwater wetlands

7 fauna during high water episodes, critical habitat for animals
8 dependent upon but not resident in freshwater wetlands, and slight
9 variations of freshwater wetland boundaries over time due to
10 hydrologic or climatologic effects; and

11 (2) A sediment and storm water control zone to reduce the
12 impacts of development upon freshwater wetlands and fresh-
13 water wetlands species.

14 b. The width of the transition area shall be determined by the
15 department as follows:

16 (1) No greater than 150 feet nor less than 75 feet for a fresh-
17 water wetland of exceptional resource value;

18 (2) No greater than 50 feet nor less than 25 feet for a fresh-
19 water wetland of intermediate resource value.

20 c. The minimum width of a transition area established pur-
21 suant to this section may be further reduced consistent with a
22 transition area averaging plan approved under section 18 of this
23 act.

1 17. a. The following activities, except for normal property
2 maintenance or minor and temporary disturbances of the transi-
3 tion area resulting from, and necessary for, normal construction
4 activities on land adjacent to the transition area, are prohibited
5 in the transition area, except in accordance with a transition area
6 waiver approved by the department pursuant to section 18 of
7 this act:

8 (1) Removal, excavation, or disturbance of the soil;

9 (2) Dumping or filling with any materials;

10 (3) Erection of structures, except for temporary structures of
11 150 square feet or less;

12 (4) Placement of pavements;

13 (5) Destruction of plant life which would alter the existing
14 pattern of vegetation.

15 b. A person proposing to engage in an activity prohibited pur-
16 suant to subsection a. of this section within 150 feet of a fresh-
17 water wetland of exceptional resource value, or within 50 feet
18 of a freshwater wetland of intermediate resource value, shall
19 apply to the department for a transition area waiver, for a fee
20 not to exceed the cost of reviewing and processing the waiver
21 application, and on forms and in the manner prescribed by the
22 commissioner pursuant to the "Administrative Procedure Act,"
23 P. L. 1968, c. 410 (C. 52:14B-1 et seq.). An agency of the State
24 proposing to engage in such an activity in a transition area shall
25 also apply to the department for a transition area waiver on
26 forms and in a manner prescribed by the commissioner but shall

27 not be required to pay a fee therefor. The waiver application
28 shall include at least the following:

29 (1) A preliminary site plan or subdivision map of the site, or
30 another map of the site if no preliminary site plan or subdivision
31 map exists, containing proposed activities and a written descrip-
32 tion of the proposed activity, the total areas to be modified, and
33 the total area of the transition area potentially affected; and

34 (2) Verification that a notice has been forwarded to the clerk,
35 environmental commission, and planning board of the municipal-
36 ity, and the planning board of the county wherein the activity is
37 to occur, which notice shall describe the activity and advise these
38 instrumentalities of local government of their opportunity to sub-
39 mit comments thereon to the department; and

40 (3) A statement detailing any potential adverse environmental
41 effects of the activity on the freshwater wetlands and any meas-
42 ures that may be necessary to mitigate those effects; and

43 (4) A transition area averaging plan, if an averaging plan is
44 required in connection with a transition area waiver requested
45 pursuant to section 18 of this act.

46 c. At the applicant's option, the maximum transition area dis-
47 tances established in subsection b. of section 16 of this act, or a
48 lesser transition area distance established pursuant to a waiver
49 approved pursuant to section 18 of this act, shall be further re-
50 duced, or the transition area adjacent to a portion of a wetlands
51 shall be eliminated, pursuant to a transition area averaging plan
52 submitted by the applicant, provided that the plan is consistent
53 with the provisions of subsection a. of section 16 of this act.

1 18. a. The department shall grant a transition area waiver re-
2 ducing the size of a transition area to not less than the minimum
3 distance established in subsection b. of section 16 of this act pro-
4 vided that (1) the proposed activity would have no substantial
5 impact on the adjacent freshwater wetland or (2) the waiver is
6 necessary to avoid a substantial hardship to the applicant caused
7 by circumstances peculiar to the property. If the proposed activity
8 is the construction of a stormwater management facility having
9 no feasible alternative on-site location or is linear development
10 having no feasible alternative location, the department shall ap-
11 prove a further transition area waiver or elimination of a portion
12 of a transition area as necessary to permit the activity. A transi-
13 tion area waiver approved pursuant to this subsection shall not
14 require transition area averaging to compensate for the reduction
15 of transition area distance or for partial elimination of the
16 transition area.

17 b. The department shall also approve transition area waivers
18 reducing the transition area distances established in subsection b.
19 of section 16 of this act and shall also approve waiver applications
20 eliminating portions of transition areas, provided that the applicant
21 submits a transition area averaging plan. The transition area
22 requirements of this act shall be satisfied if the transition area
23 averaging plan expands a portion of the transition area to com-
24 pensate, on a square footage basis, for reduction of a transition
25 area distance or for partial elimination of a transition area. The
26 applicant shall have the right to determine the area of transition
27 area reduction or partial elimination provided that the transition
28 area averaging plan will result in a transition area consistent with
29 the provisions of subsection a. of section 16 of this act. If a transi-
30 tion area waiver is approved pursuant to subsection a. of this
31 section, the average transition area required by this subsection
32 shall be based upon the transition area distance established pur-
33 suant to subsection a. of this section. If no waiver is approved
34 pursuant to subsection a. of this section, the average transition
35 area shall be based upon the maximum applicable transition area
36 distance provided in subsection b. of section 16 of this act.

37 c. Any other provision of this act to the contrary notwithstand-
38 ing, the transition area distance from a freshwater wetland of
39 exceptional resource value may be reduced to no less than 75 feet
40 except pursuant to section 12 of this act. A transition area waiver
41 shall be approved pursuant to this subsection only if a transition
42 area distance reduction would have no substantial adverse impact
43 on the adjacent freshwater wetlands or if denial of a transition
44 area waiver would result in extraordinary hardship to the appli-
45 cant because of circumstances peculiar to the subject property.
46 A transition area waiver approved pursuant to this subsection
47 shall be conditioned on a transition area averaging plan which
48 provides an average transition area of not less than 100 feet.

49 **d. The department shall issue or deny an application for a tran-*
50 *sition area waiver within 90 days of submission of a complete*
51 *application; provided, however, that if the project or activity for*
52 *which the transition area waiver is requested also involves a regu-*
53 *lated activity in a freshwater wetland, or if an application for a*
54 *permit to conduct a regulated activity in a freshwater wetland*
55 *adjacent to the transition area for which the transition area waiver*
56 *is requested is pending before the department, the department*
57 *shall approve or deny the transition area waiver within the time*
58 *period set forth for the approval or denial of a permit in subsection*
59 *c. of section 5 of this act.**

1 19. If the department denies an application for a freshwater
2 wetlands permit, the owner of record of the property affected may
3 request, and the local tax assessor shall provide, that this fact
4 be taken into account when the property is valued, assessed, and
5 taxed for property tax purposes.

1 20. An applicant for a freshwater wetlands permit issued pur-
2 suant to this act may request the commissioner for an administra-
3 tive hearing on any decision to issue or deny a permit made by
4 the department pursuant to this act. Upon receipt of such a re-
5 quest, the commissioner shall refer the matter to the Office of
6 Administrative Law, which shall assign an administrative law
7 judge to conduct a hearing on the matter in the form of a contested
8 case pursuant to the "Administrative Procedure Act," P. L. 1968,
9 c. 410 (C. 52:14B-1 et seq.). Within 45 days of receipt of the
10 administrative law judge's decision, the commissioner shall affirm,
11 reject, or modify the decision. The commissioner's action shall be
12 considered the final agency action for the purposes of the "Admin-
13 istrative Procedure Act," and shall be subject only to judicial
14 review as provided in the Rules of Court.

1 21. a. Whenever, on the basis of available information, the com-
2 missioner finds that a person is in violation of any provision of
3 this act, or any rule or regulation adopted, or permit or order
4 issued, pursuant to this act, the commissioner may:

5 (1) Issue an order requiring any such person to comply in ac-
6 cordance with subsection b. of this section; or

7 (2) Bring a civil action in accordance with subsection c. of this
8 section; or

9 (3) Levy a civil administrative penalty in accordance with sub-
10 section d. of this section; or

11 (4) Bring an action for a civil penalty in accordance with sub-
12 section e. of this section; or

13 (5) Petition the Attorney General to bring a criminal action in
14 accordance with subsection f. of this section.

15 Recourse to any of the remedies available under this section shall
16 not preclude recourse to any of the other remedies.

17 b. Whenever, on the basis of available information, the com-
18 missioner finds a person in violation of any provision of this act,
19 or of any rule or regulation adopted, or permit or order issued,
20 pursuant to this act, the commissioner may issue an order: (1)
21 specifying the provision or provisions of this act, or the rule,
22 regulation, permit or order of which he is in violation; (2) citing
23 the action which constituted the violation; (3) requiring compli-
24 ance with the provision or provisions violated; (4) requiring the

25 restoration of the freshwater wetland or transition area which is
26 the site of the violation; and (5) providing notice to the person
27 of his right to a hearing on the matters contained in the order.

28 c. The commissioner is authorized to institute a civil action in
29 Superior Court for appropriate relief from any violation of any
30 provisions of this act, or any rule or regulation adopted, or
31 permit or order issued, pursuant to this act. Such relief may in-
32 clude, singly or in combination:

33 (1) A temporary or permanent injunction;

34 (2) Assessment of the violator for the costs of any investigation,
35 inspection, or monitoring survey which led to the establishment of
36 the violation, and for the reasonable costs of preparing and bring-
37 ing legal action under this subsection;

38 (3) Assessment of the violator for any costs incurred by the
39 State in removing, correcting, or terminating the adverse effects
40 upon the freshwater wetland resulting from any unauthorized
41 regulated activity for which legal action under this subsection
42 may have been brought;

43 (4) Assessment against the violator for compensatory damages
44 for any loss or destruction of wildlife, fish or aquatic life, and for
45 any other actual damages caused by an unauthorized regulated
46 activity. Assessments under this subsection shall be paid to the
47 State Treasurer, except that compensatory damages shall be paid
48 by specific order of the court to any persons who have been ag-
49 grieved by the unauthorized regulated activity;

50 (5) A requirement that the violator restore the site of the viola-
51 tion to the maximum extent practicable and feasible.

52 d. The commissioner is authorized to assess a civil administra-
53 tive penalty of not more than \$10,000.00 for each violation, and
54 each day during which each violation continues shall constitute
55 an additional, separate, and distinct offense. Any amount assessed
56 under this subsection shall fall within a range established by regu-
57 lation by the commissioner for violations of similar type, serious-
58 ness, and duration. No assessment shall be levied pursuant to this
59 section until after the party has been notified by certified mail or
60 personal service. The notice shall identify the section of the stat-
61 ute, regulation, or order or permit condition violated; recite the
62 facts alleged to constitute a violation; state the amount of the
63 civil penalties to be imposed; and affirm the rights of the alleged
64 violator to a hearing. The ordered party shall have 20 days from
65 receipt of the notice within which to deliver to the commissioner
66 a written request for a hearing. After the hearing and upon find-
67 ing that a violation has occurred, the commissioner may issue a

68 final order after assessing the amount of the fine specified in the
69 notice. If no hearing is requested, the notice shall become a final
70 order after the expiration of the 20-day period. Payment of the
71 assessment is due when a final order is issued or the notice be-
72 comes a final order. The authority to levy an administrative order
73 is in addition to all other enforcement provisions in this act, and
74 the payment of any assessment shall not be deemed to affect the
75 availability of any other enforcement provisions in connection with
76 the violation for which the assessment is levied. Any civil ad-
77 ministrative penalty assessed under this section may be compro-
78 mised by the commissioner upon the posting of a performance bond
79 by the violator, or upon such terms and conditions as the com-
80 missioner may establish by regulation.

81 e. A person who violates this act, an administrative order issued
82 pursuant to subsection b., or a court order issued pursuant to sub-
83 section c., who fails to pay a civil administrative assessment in
84 full pursuant to subsection d., shall be subject, upon order of a
85 court, to a civil penalty not to exceed \$10,000.00 per day of such
86 violation, and each day during which the violation continues shall
87 constitute an additional, separate, and distinct offense. Any civil
88 penalty imposed pursuant to this subsection may be collected with
89 costs in a summary proceeding pursuant to "the penalty enforce-
90 ment law" (N. J. S. 2A:58-1 et seq.). The Superior Court shall
91 have jurisdiction to enforce "the penalty enforcement law" in
92 conjunction with this act.

93 f. A person who willfully or negligently violates this act shall
94 be guilty, upon conviction, of a crime of the fourth degree and
95 shall be subject to a fine of not less than \$2,500.00 nor more than
96 \$25,000.00 per day of violation. A second offense under this sub-
97 section shall subject the violator to a fine of not less than \$5,000.00
98 nor more than \$50,000.00 per day of violation. A person who know-
99 ingly makes a false statement, representation, or certification in
100 any application, record, or other document filed or required to be
101 maintained under this act, or who falsifies, tampers with or know-
102 ingly renders inaccurate, any monitoring device or method re-
103 quired to be maintained pursuant to this act, shall, upon convic-
104 tion, be subject to a fine of not more than \$10,000.00.

105 g. In addition to the penalties prescribed in this section, a notice
106 of violation of this act shall be recorded on the deed of the prop-
107 erty wherein the violation occurred, on order of the commissioner,
108 by the clerk or register of deeds and mortgages of the county
109 wherein the affected property is located and with the clerk of the

110 Superior Court and shall remain attached thereto until such time
111 as the violation has been remedied and the commissioner orders
112 the notice of violation removed.

113 b. If the violation is one in which the department has deter-
114 mined that the restoration of the site to its previolation condition
115 would increase the harm to the freshwater wetland or its ecology,
116 the department may issue an "after the fact" permit for the regu-
117 lated activity that has already occurred; provided that assessment
118 against the violator for costs or damages enumerated in subsec-
119 tion c. of this section have been made, the creation or restoration
120 of freshwater wetlands resources at another site has been required
121 of the violator, an opportunity has been afforded for public hear-
122 ing and comment, and the reasons for the issuance of the "after
123 the fact" permit are published in the New Jersey Register and
124 in a newspaper of general circulation in the geographical area of
125 the violation. Any person violating an "after the fact" permit
126 issued pursuant to this subsection shall be subject to the provisions
127 of this section.

128 i. The burden of proof and degrees of knowledge or intent re-
129 quired to establish a violation of this act shall be no greater than
130 the burden of proof or degree of knowledge or intent which the
131 United States Environmental Protection Agency must meet in
132 establishing a violation of the Federal Act or implementing
133 regulations.

134 j. The department shall establish and implement a program de-
135 signed to facilitate public participation in the enforcement of this
136 act which complies with the requirements of the Federal Act and
137 implementing regulations.

138 k. The department shall make available without restriction any
139 information obtained or used in the implementation of this act to
140 the United States Environmental Protection Agency upon a re-
141 quest therefor.

142 l. The department may require an applicant or permittee to
143 provide any information the department requires to determine
144 compliance with the provisions of this act.

145 m. The department shall have the authority to enter any prop-
146 erty, facility premises or site for the purpose of conducting in-
147 spections, sampling of soil or water, copying or photocopying docu-
148 ments or records, and for otherwise determining compliance with
149 the provisions of this act.

1 22. a. Any person having a recorded interest in land affected
2 by a freshwater wetlands permit issued, modified or denied pur-
3 suant to the provision of this act may file an action in a court of

4 competent jurisdiction to determine if the issuance, modification
5 or denial of the freshwater wetlands permit constitutes a taking
6 of property without just compensation.

7 b. If the court determines that the issuance, modification, or
8 denial of a freshwater wetlands permit by the department pursuant
9 to this act constitutes a taking of property without just compen-
10 sation, the court shall give the department the option of compen-
11 sating the property owner for the full amount of the lost value,
12 condemning the affected property pursuant to the provisions of
13 the "Eminent Domain Act of 1971," P. L. 1971, c. 301 (C. 20:3-1
14 et seq.), or modifying its action or inaction concerning the property
15 so as to minimize the detrimental effect to the value of the property.

1 23. a. The department shall consider for adoption as general
2 permits, to the extent practicable and feasible, and to the extent
3 that this adoption is consistent to the maximum extent practicable
4 and feasible with the provisions of this act, all applicable Nation-
5 wide Permits which were approved under the Federal Act as of
6 November 13, 1980 by the U. S. Army Corps of Engineers.

7 b. The department shall issue a general permit for an activity
8 in a freshwater wetland which is not a surface water tributary
9 system discharging into an inland lake or pond, or a river or
10 stream, and which would not result in the loss or substantial modi-
11 fication of more than one acre of freshwater wetland, provided
12 that this activity will not take place in a freshwater wetland of
13 exceptional resource value. The department shall issue a general
14 permit for a regulated activity in a freshwater wetland located in
15 an area considered a headwater pursuant to the Federal Act if the
16 regulated activity would not result in the loss or substantial modi-
17 fication of more than one acre of a swale or a man-made drainage
18 ditch. The provisions of this subsection shall not apply to any
19 wetlands designated as priority wetlands by the United States
20 Environmental Protection Agency.

21 c. The department shall issue additional *general* permits on a
22 Statewide or regional basis for the following categories of activities,
23 if the department determines, after conducting an environmental
24 analysis and providing public notice and opportunity for a public
25 hearing, that the activities will cause only minimal adverse environ-
26 mental impacts when performed separately, will have only minimal
27 cumulative adverse impacts on the environment, will cause only
28 minor impacts on freshwater wetlands, will be in conformance with
29 the purposes of this act, and will not violate any provision of the
30 Federal Act:

31 (1) Maintenance, reconstruction, or repair of roads or public
32 utilities lawfully existing prior to the effective date of this act or
33 permitted under this act, provided that such activities do not
34 result in disturbance of additional wetland upon completion of
35 the activity;

36 (2) Maintenance or repair of active irrigation or drainage ditches
37 lawfully existing prior to the effective date of this act or per-
38 mitted under this act, provided that such activities do not result
39 in disturbance of additional freshwater wetlands upon completion
40 of the activity;

41 (3) Appurtenant improvements or additions to residential
42 dwellings lawfully existing prior to the effective date of this act,
43 provided that the improvements or additions require less than a
44 cumulative surface area of 750 square feet of fill and will not result
45 in new alterations to a freshwater wetland outside of the fill area;

46 (4) Mosquito management activities determined to be consistent
47 with best mosquito control and freshwater wetlands management
48 practices and for which all appropriate actions to minimize adverse
49 environmental effects have been or shall be taken.

50 (5) Activities, as determined by the department, which will have
51 no significant adverse environmental impact on freshwater wet-
52 lands, provided that the issuance of a general permit for any such
53 activities is consistent with the provisions of the Federal Act and
54 has been approved by the United States Environmental Protection
55 Agency.

56 (6) Regulated activities which have received individual or
57 general permit approval or a finding of no jurisdiction by the U. S.
58 Army Corps of Engineers pursuant to the Federal Act, and which
59 have received a grant waiver pursuant to the "National Environ-
60 mental Policy Act of 1969" (42 U. S. C. 4321 et seq.) provided, that
61 upon the expiration of a permit any application for a renewal or
62 modification thereof shall be made to the department.

63 (7) State or federally funded roads planned and developed in
64 accordance with the "National Environmental Policy Act of 1969"
65 and the Federal Act, and with Executive Order Number 53, ap-
66 proved October 5, 1973 and for which application has been made
67 prior to the effective date of this act to the United States Army
68 Corps of Engineers for an individual or general permit under the
69 Federal Act; provided that upon expiration of a permit any
70 application for a renewal or modification thereof shall be made to
71 the department, and, provided, further, that the department shall
72 not require transition areas as a condition of the renewal or
73 modification of the permit.

74 (8) Maintenance and repair of storm water management facili-
75 ties lawfully constructed prior to the effective date of this act or
76 permitted under this act, provided that these activities do not
77 result in disturbance of additional freshwater wetlands upon com-
78 pletion of the activity.

79 (9) Maintenance, reconstruction, or repair of buildings or struc-
80 tures lawfully existing prior to the effective date of this act or
81 permitted under this act, provided that these activities do not
82 result in disturbance of additional freshwater wetlands upon com-
83 pletion of the activity.

84 d. The department may, on the basis of findings with respect to
85 a specific application, modify a general permit issued pursuant to
86 this section by adding special conditions. The department may
87 rescind a general permit and require an application for an in-
88 dividual permit if the commissioner finds that additional permit
89 conditions would not be sufficient and that special circumstances
90 make this action necessary to insure compliance with this act or
91 the Federal Act.

92 e. The department shall review general permits adopted or
93 authorized pursuant to subsection c. every five years, which review
94 shall include public notice and opportunity for public hearing.
95 Upon this review the department shall either modify, reissue or
96 revoke a general permit. If a general permit is not modified or
97 reissued within five years of publication in the New Jersey Regis-
98 ter, it shall automatically expire.

99 f. The date of publication of the general permits authorized by
100 subsections a. and b. of this section shall be the effective date of
101 this act.

102 g. A person proposing to engage in an activity covered by a
103 general permit shall provide written notice to the department
104 containing a description of the proposed activity at least 30
105 working days prior to commencement of work. The department,
106 within 30 days of receipt of this notification, shall notify the person
107 proposing to engage in the activity covered by a general permit as
108 to whether an individual permit is required for the activity.

1 24. a. Notwithstanding the provisions of this or any other act to
2 the contrary, the department may issue a temporary emergency
3 freshwater wetlands permit for a regulated activity if:

4 (1) An unacceptable threat to life or severe loss of property will
5 occur if an emergency permit is not granted; and

6 (2) The anticipated threat or loss may occur before a permit
7 can be issued or modified under the procedures otherwise required
8 by this act and other applicable State law.

9 b. The emergency permit shall incorporate, to the greatest extent
10 practicable and feasible but not inconsistent with the emergency
11 situation, the standards and criteria required for non-emergency
12 regulated activities under this act and shall:

13 (1) Be limited in duration to the time required to complete the
14 authorized emergency activity, not to exceed 90 days:

15 (2) Require the restoration of the freshwater wetland within
16 this 90 day period, except that if more than the 90 days from the
17 issuance of the emergency permit is required to complete restora-
18 tion, the emergency permit may be extended to complete this
19 restoration.

20 c. The emergency permit may be issued orally or in writing,
21 except that if it is issued orally, a written emergency permit shall
22 be issued within five days thereof.

23 d. Notice of the issuance of the emergency permit shall be pub-
24 lished and public comments received, in accordance with the
25 provisions of the Federal Act, and applicable State law, provided
26 that this notification shall be sent no later than 10 days after issu-
27 ance of the emergency permit.

28 e. The emergency permit may be terminated at any time without
29 process upon a determination by the department that this action
30 is appropriate to protect human health or the environment.

1 25. a. Within ***[nine]*** ***10*** months of the enactment of this act,
2 ***and after a 60 day comment period,*** the department shall adopt,
3 pursuant to the provisions of the "Administrative Procedure Act,"
4 any rules and regulations necessary to implement the provisions
4A of this act. ***These rules and regulations shall include the general**
4B **permits which the department will issue pursuant to section 23 of**
4C **this act.***

5 b. Within one year of the enactment of this act, the department
6 shall adopt, in consultation with the United States Environmental
7 Protection Agency, a list of vegetative species classified as hydro-
8 phytes, as defined in section 3 of this act, indicative of freshwater
9 wetlands and consistent with the geographical regions of the State.

10 c. The department shall develop a functional, complete, and up-
11 to date composite freshwater wetlands map and inventory using the
12 most recent available data, which shall include, but need not be
13 limited to, aerial photographs and soils inventories at a scale suit-
14 able for freshwater wetlands regulatory purposes, and shall make
15 appropriate sections of this map and inventory available on a
16 periodic basis to the county clerk or register of deeds and mort-
17 gages in each county, as appropriate, and to the clerk of each
18 municipality.

1 26. The department shall, within 180 days of enactment of this
2 act, forward to the clerk of each municipality copies of the appro-
3 priate National Wetlands Inventory maps for the State prepared
4 by the United States Fish and Wildlife Service and direct the
5 clerk to notify the residents of the municipality of the availability
6 for inspection of these maps, by publication in a newspaper of
7 general circulation. The department shall inform the clerk of each
8 municipality that these maps have not been determined to be
9 accurate for the purposes of locating the actual wetlands boundary,
10 and that the department will be preparing a composite freshwater
11 wetlands map and inventory at the specified uniform scale.

1 27. a. The department and the Attorney General shall take all
2 appropriate action to secure the assumption of the permit jurisdic-
3 tion exercised by the United States Army Corps of Engineers
4 pursuant to the Federal Act. The department shall make an initial
5 application to the United States Environmental Protection Agency
6 for this assumption within one year of enactment of this act, and
7 shall provide the Governor and the Legislature with a schedule
8 therefor and a copy of the application and supporting material
9 forwarded to the federal government.

10 b. The department shall utilize, to the maximum extent practi-
11 cable and feasible, forms and procedures for permit applications
12 which are identical to those used by the United States Army Corps
13 of Engineers in issuing permits under the Federal Act.

14 c. The department shall seek to conduct the review of an applica-
15 tion for a freshwater wetlands permit in conjunction with federal
16 personnel responsible for reviewing an application of a permit
17 under the Federal Act.

18 d. It is the intention of the Legislature that the permit process
19 imposed in this act be conducted by the department concurrently
20 with the review conducted by the federal government until such
21 time as the department secures assumption of the permit jurisdic-
22 tion exercised by the United States Army Corps of Engineers.

1 28. The department shall, within one year of the effective date
2 of this act, conduct a public education program on the provisions
3 of this act and the rules and regulations adopted pursuant hereto.

1 29. The department shall, within two years of the effective date
2 of this act, prepare and submit a report to the Governor, the
3 President of the Senate and the Speaker of the General Assembly,
4 and the Senate Energy and Environment Committee and the
5 Assembly Energy and Natural Resources Committee, or their
6 designated successors. The report shall describe:

7 (1) The success or failure of mitigation measures performed in
8 actual development situations, both within the State and in other
9 states, the nature of the mitigation measures, and the state-of-the-
10 art techniques used for mitigation: and

11 (2) Recommendations for legislative or administrative action
12 necessary to ensure the long term protection of freshwater wet-
13 lands from damage and degradation resulting from land use
14 activities, pollution, and hydrologic changes which occur in up-
15 stream regions of the same watersheds of particular freshwater
16 wetlands.

1 30. It is the intent of the Legislature that the program estab-
2 lished by this act for the regulation of freshwater wetlands con-
3 stitute the only program for this regulation in the State except
4 to the extent that these areas are regulated consistent with the
5 provisions of section 6 of this act. To this end no municipality,
6 county, or political subdivision thereof, shall enact, subsequent to
7 the effective date of this act, any law, ordinance, or rules or regula-
8 tions regulating freshwater wetlands, and further, this act, on and
9 subsequent to its effective date, shall supersede any law or ordi-
10 nance regulating freshwater wetlands enacted prior to the effective
11 date of this act. **Between the enactment and effective date of this*
12 *act, no municipality, county, or political subdivision thereof shall*
13 *enact any law, ordinance, or rule and regulation requiring a transi-*
14 *tion area adjacent to a freshwater wetland; provided however,*
15 *that any such law, ordinance, or rule and regulation adopted prior*
16 *to the enactment of this act shall be valid until the effective date*
17 *of this act.**

1 31. Section 5 of P. L. 1977, c. 74 (C. 5S:10A-5) is amended to
2 read as follows:

3 The department is empowered to:

4 a. Exercise general supervision of the administration and
5 enforcement of this act and all rules, regulations and orders
6 promulgated hereunder;

7 b. Assess compliance of a discharger with applicable require-
8 ments of State and Federal law pertaining to the control of
9 pollutant discharges and the protection of the environment and,
10 also, to issue certification with respect thereto as required by
11 section 401 of the Federal Act;

12 c. *Assess compliance of a person with applicable requirements*
13 *of State and federal law pertaining to the control of the discharge*
14 *of dredged and fill material into the waters of the State and the*
15 *protection of the environment and, also, to issue, deny, modify,*

16 *suspend, or revoke permits with respect thereto as required by*
17 *section 404 of the "Federal Water Pollution Control Act Amend-*
18 *ments of 1972," as amended by the "Clean Water Act of 1977,"*
19 *(33 U. S. C. § 1344), and implementing regulations;*

20 **[c.]** *d.* Advise, consult, and cooperate with other agencies of the
21 State, the federal government, other states and interstate agencies,
22 including the State Soil Conservation Committee, and with affected
23 groups, political subdivisions and industries in furtherance of the
24 purposes of this act;

25 **[d.]** *e.* Administer State and federal grants to municipalities,
26 counties and other political subdivisions, or any recipient approved
27 by the commissioner according to terms and conditions approved
28 by him in order to meet the goals and objectives of this act.

1 32. Section 6 of P. L. 1977, c. 74 (C. 58:10A-6) is amended to
2 read as follows:

3 6. a. It shall be unlawful for any person to discharge any pollu-
4 tant, except in conformity with a valid New Jersey Pollutant
5 Discharge Elimination System permit that has been issued by the
6 commissioner pursuant to this act or a valid National Pollution
7 Discharge Elimination System permit issued by the administrator
8 pursuant to the Federal Act, as the case may be.

9 b. It shall be unlawful for any person to build, install, modify or
10 operate any facility for the collection, treatment or discharge of
11 any pollutant, except after approval by the department pursuant
12 to regulations adopted by the commissioner.

13 c. The commissioner is hereby authorized to grant, deny, modify,
14 suspend, revoke, and reissue NJPDES permits in accordance with
15 this act, and with regulations to be adopted by him. The com-
16 missioner may reissue, with or without modifications, an NJPDES
17 permit duly issued by the federal government as the NJPDES
18 permit required by this act.

19 d. The commissioner may, by regulation, exempt the following
20 categories of discharge, in whole or in part, from the requirement of
21 obtaining a permit under this act; provided, however, that an
22 exemption afforded under this section shall not limit the civil or
23 criminal liability of any discharger nor exempt any discharger
24 from approval or permit requirements under any other provision
25 of law:

26 (1) Additions of sewage, industrial wastes or other materials into
27 a publicly owned sewage treatment works which is regulated by
28 pretreatment standards;

29 (2) Discharges of any pollutant from a marine vessel or other

- 30 discharges incidental to the normal operation of marine vessels;
- 31 (3) Discharges from septic tanks, or other individual waste
32 disposal systems, sanitary landfills, and other means of land dis-
33 posal of wastes;
- 34 (4) **[Discharges of dredged or fill materials]** *Discharges of*
35 *dredged or fill materials into waters for which the State could not*
36 *be authorized to administer the section 404 program under section*
37 *404 (g) of the "Federal Water Pollution Control Act Amend-*
38 *ments of 1972," as amended by the "Clean Water Act of 1977"*
39 *(33 U. S. C. § 1344) and implementing regulations;*
- 40 (5) Nonpoint source discharges:
- 41 (6) Uncontrolled nonpoint source discharges composed entirely
42 of storm water runoff when these discharges are uncontaminated
43 by any industrial or commercial activity unless these particular
44 storm water runoff discharges have been identified by the admin-
45 istrator or the department as a significant contributor of pollution:
- 46 (7) Discharges conforming to a national contingency plan for
47 removal of oil and hazardous substances, published pursuant to
48 section 311(c)(2) of the Federal Act.
- 49 e. The commissioner shall not issue any permit for:
- 50 (1) The discharge of any radiological, chemical or biological
51 warfare agent or high-level radioactive waste into the waters of
52 this State;
- 53 (2) Any discharge which the United States Secretary of the
54 Army, acting through the Chief of Engineers, finds would sub-
55 stantially impair anchorage or navigation:
- 56 (3) Any discharge to which the administrator has objected in
57 writing pursuant to the Federal Act:
- 58 (4) Any discharge which conflicts with an areawide plan adopted
59 pursuant to law.
- 60 f. A permit under this act shall require the permittee:
- 61 (1) To achieve effluent limitations based upon guidelines or
62 standards established pursuant to the Federal Act or this act,
63 together with such further discharge restrictions and safeguards
64 against unauthorized discharge as may be necessary to meet water
65 quality standards, areawide plans adopted pursuant to law, or
66 other legally applicable requirements;
- 67 (2) Where appropriate, to meet schedules for compliance with
68 the terms of the permit and interim deadlines for progress or
69 reports of progress towards compliance:
- 70 (3) To insure that all discharges are consistent at all times with
71 the terms and conditions of the permit and that no pollutant will
72 be discharged more frequently than authorized or at a level in
73 excess of that which is authorized by the permit;

74 (4) To submit application for a new permit in the event of any
75 contemplated facility expansion or process modification that would
76 result in new or increased discharges or, if these would not violate
77 effluent limitations or other restrictions specified in the permit, to
78 notify the commissioner of such new or increased discharges:

79 (5) To install, use and maintain such monitoring equipment and
80 methods, to sample in accordance with such methods, to maintain
81 and retain such records of information from monitoring activities,
82 and to submit to the commissioner such reports of monitoring
83 results as he may require;

84 (6) At all times, to maintain in good working order and operate
85 as effectively as possible, any facilities or systems of control in-
86 stalled to achieve compliance with the terms and conditions of the
87 permit.

88 g. The commissioner shall have a right of entry to all premises
89 in which a discharge source is or might be located or in which
90 monitoring equipment or records required by a permit are kept,
91 for purposes of inspection, sampling, copying or photographing.

92 h. In addition, any permit issued for a discharge from a municipi-
93 pal treatment works shall require the permittee:

94 (1) To notify the commissioner in advance of the quality and
95 quantity of all new introductions of pollutants into a facility and of
96 any substantial change in the pollutants introduced into a facility
97 by an existing user of the facility, except for such introductions of
98 nonindustrial pollutants as the commissioner may exempt from this
99 notification requirement when ample capacity remains in the
100 facility to accommodate new inflows. Such notifications shall
101 estimate the effects of such changes on the effluents to be discharged
102 into the facility.

103 (2) To establish an effective regulatory program, alone or in
104 conjunction with the operators of sewage collection systems, that
105 will assure compliance and monitor progress toward compliance
106 by industrial users of the facilities with user charge and cost
107 recovery requirements of the Federal Act or State law and toxicity
108 standards adopted pursuant to this act and pretreatment standards.

109 (3) As actual flows to the facility approach design flow or design
110 loading limits, to submit to the commissioner for his approval, a
111 program which the permittee and the persons responsible for build-
112 ing and maintaining the contributory collection system shall pursue
113 in order to prevent overload of the facilities.

114 i. All owners of municipal treatment works are hereby authorized
115 to prescribe terms and conditions, consistent with applicable State

116 and federal law, upon which pollutants may be introduced into
117 such works, and to exercise the same right of entry, inspection,
118 sampling and copying with respect to users of such works as are
119 vested in the commissioner by this act or by any other provision of
120 State law.

121 j. In reviewing permits submitted in compliance with this act and
122 in determining conditions under which such permits may be
123 approved, the commissioner shall encourage the development of
124 comprehensive regional sewerage facilities which serve the needs
125 of the regional community and which conform to the adopted area-
126 wide water quality management plan for that region.

1 33. There is appropriated from the General Fund to the depart-
2 ment the sum of \$60,000.00, which shall be used to undertake and
3 coordinate all activities required to implement the provisions of
4 this act on the effective date of this act.

1 34. This act shall take effect one year after enactment, except
2 that section 25, section 26, section 27 *, *section 30** and section 33
3 shall take effect immediately, and except that the department shall
4 not implement the provisions of sections 16, 17, and 18 until two
5 years after enactment. The department shall take any administra-
6 tive actions prior to the effective date of this act necessary to im-
7 plement the provisions of this act on and after the effective date.

NATURAL RESOURCES

The "Freshwater Wetlands Protection Act."

ASSEMBLY, No. 2342

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblywoman OGDEN, Assemblymen BENNETT, SCHUBER, WEIDEL, Assemblywoman RANDALL, Assemblymen FRELINGHUYSEN, KERN, Assemblywoman DONOVAN, Assemblymen GENOVA, PALAIA, ROONEY, Assemblywoman MUHLER, Assemblymen SMITH, FELICE, DARIO, MAZUR, ARANGO, CATRILLO, GARGIULO, FRANKS, Assemblywoman SMITH, Assemblyman BAER and Assemblywoman CRECCO

AN ACT concerning the regulation of freshwater wetlands, supplementing Title 13 of the Revised Statutes, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Freshwater
2 Wetlands Act."

1 2. a. The Legislature finds that freshwater wetlands play an
2 integral role in maintaining the quality of life through material
3 contributions to the water quality and supply of the State, its
4 economy, food supply, and fish and wildlife resources by:

5 (1) Serving as an integral and invaluable component of the
6 surface water systems of the State, which function to support the
7 biological viability and natural and finite effluent purification ca-
8 pacity of surface and ground waters, to the benefit of the general
9 public;

10 (2) Providing a natural means of flood and storm damage pro-
11 tection through the absorption and storage of water during high
12 runoff periods and through the reduction of flood crests, thereby
13 protecting against the loss of life and property;

14 (3) Serving as a buffer zone between dry land and water courses,
15 thereby retarding soil erosion;

16 (4) Providing essential breeding, spawning, nesting and winter-
17 ing habitats for a major portion of the State's fish and wildlife,
18 including migrating birds, endangered species, and commercially
19 and recreationally important wildlife; and

20 (5) Maintaining critical base flow to surface waters through the
21 gradual release of stored flood waters and ground water, particu-
22 larly during drought periods.

23 b. The Legislature further finds that:

24 (1) While the State has acted for the public benefit to protect
25 coastal wetland areas, it has not, except indirectly, taken concom-
26 itant action to protect the State's inland waterways and wetlands;
27 that in this the most densely populated State, located in the North-
28 east corridor where pressures for commercial and residential
29 development define the pace and pattern of land use, and while
30 wetland conservation is a matter of State concern because a wet-
31 land in one jurisdiction may be affected by acts on a river, lake,
32 stream or wetland of another jurisdiction, it is consistent with the
33 public interests to establish a program for the systematic review
34 of activities in and around freshwater wetlands areas to provide
35 predictability in the protection of the finite and valuable resource.

36 (2) The public benefits arising from the natural functions of
37 wetlands, and the public harm from wetland losses, are distinct
38 from and often exceed the private value of wetland areas.

39 (3) It shall be the policy of the State to preserve the purity
40 and integrity of freshwater wetlands from random, unnecessary
41 or undesirable alteration or disturbance.

42 (4) In an effort to preserve and protect freshwater wetlands
43 areas it is important that the State secures, as expeditiously as
44 possible, the assumption of the permit jurisdiction exercised by
45 the United States Army Corps of Engineers pursuant to the "Fed-
46 eral Water Pollution Control Act," (33 U. S. C. s. 1344).

1 3. As used in this act:

2 a. "Buffer" or "buffer zone" means an area of land adjacent to a
3 freshwater wetland which serves to protect the wetland from ad-
4 verse impacts or serves as an integral component of the wetlands
5 ecosystem;

6 b. "Commissioner" means the Commissioner of the Department
7 of Environmental Protection;

8 c. "Department" means the Department of Environmental Pro-
9 tection;

10 d. "Environmental commission" means a municipal advisory
11 body created pursuant to P. L. 1968, c. 245 (C. 40:56A-1 et seq.);

12 e. "Freshwater wetland" means an area that is inundated or
13 saturated by surface water or ground water at a frequency and
14 duration sufficient to support, and that under normal circumstances
15 does support aquatic life or a prevalence of vegetation typically
16 adapted for life in saturated soil conditions, commonly known as
17 hydrophytic vegetation;

18 f. "Freshwater wetlands permit" means a permit to engage in
19 a regulated activity issued pursuant to the provisions of this act;

20 g. "Hazardous substances" means those substances enumerated
21 in section 3 of P. L. 1976, c. 141 (C. 58:10-23.1b);

22 h. "Hydrophyte" means plant life adapted to growth and repro-
23 duction under periodically saturated root zone conditions during
24 a significant portion of the growing season;

25 i. "Linear development" means land uses such as roads, sewerage
26 and stormwater management pipes, gas and water pipelines, elec-
27 tric, telephone and other transmission lines, and the rights-of-
28 ways therefor whose basic function is to connect two points to
29 serve a public purpose. Linear development shall not be construed
30 to mean residential, commercial, office or industrial buildings and
31 associated roadways or utilities;

32 j. "Person" includes corporations, companies, associations, so-
33 cieties, firms, partnerships and joint stock companies as well as
34 individuals, unless restricted by the context to an individual as
35 distinguished from a corporate entity or specifically restricted
36 to one or some of the above enumerated synonyms and includes
37 agencies of this State, the United States, any other state of the
38 United States, and any foreign country or government lawfully
39 owning or possessing property within this State;

40 k. "Regulated activity" means an activity which would alter a
41 freshwater wetland in any of the following ways:

42 (1) The removal, excavation, disturbance or dredging of soil,
43 sand, gravel, or aggregate material of any kind;

44 (2) The drainage or disturbance of the water level or water
45 table;

46 (3) The dumping, discharging or filling with any materials;

47 (4) The driving of pilings, or the erection of buildings or struc-
48 tures of any kind;

49 (5) The placing of obstructions whether or not they interfere
50 with the flow of water;

51 (6) The destruction of plant life including the cutting of trees.

52 except when performed to the minimum extent feasible in connec-
53 tion with survey soil borings for environmental investigations.

1 4. a. A person proposing to engage in a regulated activity may,
2 prior to applying for a freshwater wetlands permit, request from
3 the department a letter of interpretation to establish that the site
4 of the regulated activity is in fact located in a freshwater wetland.

5 b. A person proposing to engage in a land use within a buffer
6 zone may, prior to applying for a buffer zone waiver pursuant to
7 section 6 of this act, request from the department a letter of inter-
8 pretation to establish that the site of the land use is in fact located
9 in the buffer zone.

10 c. Within 20 days after receipt of a request for a letter of in-
11 terpretation, the department may require the submission of any
12 additional information necessary to issue the letter of interpre-
13 tation.

14 d. If no additional information is required, the department shall
15 issue a letter of interpretation within 30 days of receiving the re-
16 quest.

17 e. If additional information is required the department shall
18 issue a letter of interpretation within 45 days of receipt of the
19 information.

20 f. If a person requesting the letter has not made a reasonable
21 good faith effort to provide the department with information suf-
22 ficient to make a determination, the department shall issue a letter
23 of interpretation requiring the application for a freshwater wet-
24 lands permit.

25 g. The department may charge a fee for reviewing the informa-
26 tion submitted and for issuing a letter of interpretation.

1 5. a. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for a
3 fee not to exceed the cost of reviewing and processing the appli-
4 cation, on forms and in the manner prescribed by the commissioner
5 pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410
6 (C. 52:14B-1 et seq.). An agency of the State proposing to engage
7 in a regulated activity also shall apply to the department for a
8 freshwater wetlands permit on forms and in a manner prescribed
9 by the commissioner, but shall not be required to pay a fee there-
10 for. The application shall include at least the following:

11 (1) A plan of the site containing all proposed development
12 activities and a written description of the proposed regulated
13 activity, the total area to be modified, and the total area of the
14 freshwater wetlands to be affected.

15 (2) Verification that a notice has been forwarded to the clerk,
16 environmental commission and planning board of the municipality,
17 and the planning board of the county, and landowners within 200
18 feet of the site of the proposed regulated activity which notice may
19 be filed concurrently with notices required pursuant to P. L. 1975,
20 c. 291 (C. 40:55D-1 et seq.) wherein the regulated activity is to
21 occur, which notice shall describe the activity and advise these
22 instrumentalities of local government of their opportunity to sub-
23 mit comments to the department;

24 (3) Verification that notice has been published in a newspaper
25 of local circulation.

26 (4) A statement detailing any potential adverse environmental
27 effects of the regulated activity and what measures may be neces-
28 sary to mitigate those effects.

29 b. The department shall, after according consideration to the
30 comments of the environmental commission and planning board of
31 the county wherein the regulated activity is to take place, federal
32 and State agencies of competent jurisdiction, other affected munici-
33 palities and counties, and the general public, issue a freshwater
34 wetlands permit only if it finds that the regulated activity does
35 not constitute linear development and the activity meets all of the
36 following:

37 (1) Requires access to water or freshwater wetlands or is water
38 dependent as a central element of its basic function;

39 (2) Has no prudent and feasible alternative site which does not
40 involve freshwater wetlands or a significantly reduced area of
41 freshwater wetlands;

42 (3) Does not result in an unacceptable disruption to wetland
43 resources. In determining whether a disruption to the wetland
44 resources is unacceptable, the findings set forth in section 2 of
45 this act shall be considered;

46 (4) Is in the public interest, is necessary to realize the benefits
47 derived from the activity, and is otherwise lawful.

48 c. To assist in determining whether the activity is in the public
49 interest, the applicant shall provide information comparing the
50 benefits which may reasonably be expected to accrue from the
51 proposal and the reasonably foreseeable adverse effects of the
52 activity. The decision by the department shall reflect the national
53 and State concern for the protection of natural resources from
54 pollution, impairment and destruction. The following criteria shall
55 be considered:

56 (1) The relative extent of the public and private need for the
57 proposed activity;

58 (2) The availability of feasible and prudent alternative loca-
59 tions and methods to accomplish the expected benefits from the
60 activity;

61 (3) The extent and permanence of the beneficial or detrimental
62 effects which the proposed activity may have on the public and
63 private uses to which the area is suited, including the benefits the
64 wetland provides;

65 (4) The probable impact of each proposal in relation to the
66 cumulative effect created by other existing and anticipated activi-
67 ties in the watershed;

68 (5) The probable impact on recognized historic, cultural, scenic,
69 ecological, or recreational values and on the public health or fish
70 and wildlife;

71 (6) The size of the wetland which may be affected;

72 (7) The amount of the remaining wetland in the general area;

73 (8) Proximity to any waterway; and,

74 (9) The economic value, both public and private, of the proposed
75 land change to the general area.

76 d. If the regulated activity constitutes linear development the
77 department shall issue a freshwater wetlands permit only if:

78 (1) The existing hydrologic function of the wetland will be
79 maintained to the maximum amount feasible;

80 (2) There is no prudent and feasible alternative site for the
81 activity that is not a freshwater wetland or which affects a signifi-
82 cantly reduced area of freshwater wetlands;

83 (3) The alignment of the proposed activity is located in existing
84 transportation rights-of-way to the maximum extent practicable;
85 and

86 (4) The proposed activity will not facilitate additional develop-
87 ment in freshwater wetlands or promote degradation of freshwater
88 wetlands.

89 e. The department may use the National Wetland Inventory
90 maps prepared by the United States Fish and Wildlife Service for
91 the State, and the county soil surveys prepared by the Soil Con-
92 servation Service of the United States Department of Agriculture,
93 or any other maps or information which will aid the department
94 in its review.

95 f. If a freshwater wetlands permit is approved and issued pur-
96 suant to the provisions of this act the department may reduce or
97 eliminate the buffer zone as required to accommodate the approved
98 use.

99 g. Under all circumstances the department shall require that,

100 as a condition of the freshwater wetlands permit, all appropriate
101 measures have been carried out to mitigate adverse environmental
102 impacts, restore vegetation, habitats, and land and water features,
103 prevent sedimentation and erosion and minimize the area of fresh-
104 water wetlands disturbance. The department may require the
105 creation or restoration of an area of freshwater wetlands for
106 regulated activities or any other special conditions the department
107 deems necessary.

108 h. The department shall require a person applying for a permit
109 or in receipt of a permit to provide any information the department
110 reasonably requires to assure compliance with the provisions of
111 this act. Upon reasonable cause or obtaining a search warrant,
112 the department may enter the premises wherein a regulated activ-
113 ity is located or where the information required under this sub-
114 section is located.

1 6. a. There shall be a buffer zone adjacent to freshwater wet-
2 lands which shall have the following purposes:

3 (1) Ecological transition zone from uplands to wetlands which
4 is an integral portion of the wetlands ecosystem, providing tem-
5 porary refuge for wetlands fauna during highwater episodes,
6 critical habitat for animals dependent upon but not resident in
7 wetlands, and slight variations of wetland boundaries over time
8 due to hydrologic or climatologic effects;

9 (2) Sediment and storm water control zone to reduce the im-
10 pacts of development upon wetlands and wetlands species;

11 b. The following average buffer zone distances shall be applied
12 by the department in considering applications for buffer zone
13 waivers under subsection d. of this section:

14 (1) 300 feet for hazardous and solid waste facilities, industrial
15 facilities as regulated under the "Environmental Cleanup Respon-
16 sibility Act," P. L. 1983, c. 330 (C. 13:1K-6 et al.), office or com-
17 mercial developments greater than 100,000 square feet in floor
18 space, and residential subdivisions or developments greater than
19 100 units;

20 (2) 200 feet for office or commercial developments greater than
21 50,000 square feet in floor space, residential subdivisions or de-
22 velopments of greater than 50 units, and linear development:

23 (3) 100 feet for commercial or office developments of 50,000
24 square feet of floor space or less, and residential subdivisions or
25 developments of less than 51 but more than one unit. The actual
26 buffer zone distance shall be delineated in such a way as to maxi-
27 mize the protection of freshwater wetlands, with an average buffer

28 zone meeting the criteria established in paragraphs (1) through
29 (3) of this subsection, so that the wetlands protection provided by
30 the buffer zone will be essentially consistent throughout the zone.
31 with a minimum distance of 20 feet in any section of the buffer zone.

32 c. A person proposing to engage in a land use described in sub-
33 section b. of this section within 300 feet of a freshwater wetland
34 shall apply to the department for a determination as to the ap-
35 plicable presumed buffer zone for the proposed use, for a fee of
36 \$25.00 per application. The application shall describe the proposed
37 land use with respect to the criteria in subsection b. of this section
38 and include a map showing the freshwater wetland boundary, the
39 proposed land use and the proposed freshwater wetland buffer.
40 The department shall notify the applicant of the applicable buffer
41 zone for the proposed land use, within 30 days of the receipt of
42 the application.

43 d. A person proposing to engage in a land use described in sub-
44 section b. of this section within a buffer zone shall apply to the
45 department for a buffer zone waiver, for a fee not to exceed the
46 cost of reviewing and processing the waiver application, on forms
47 and in the manner prescribed by the commissioner pursuant to the
48 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
49 et seq.). An agency of the State proposing to engage in such a
50 land use in a buffer zone shall also apply to the department for a
51 buffer zone waiver on forms and in a manner prescribed by the
52 commissioner but shall not be required to pay a fee therefor. The
53 waiver application shall include at least the following:

54 (1) A plan of the site containing all proposed development
55 activities and a written description of the proposed land use, the
56 total areas to be modified, and the total area of the buffer zone to
57 be affected;

58 (2) Verification that a notice has been forwarded to the clerk,
59 environmental commission, and planning board of the municipality,
60 and the planning board of the county wherein the land use is to
61 occur, which notice shall describe the land use and advise these
62 instrumentalities of local government of their opportunity to sub-
63 mit comments to the department;

64 (3) A statement detailing any potential adverse environmental
65 effects of the land use on the freshwater wetlands and what mea-
66 sures may be necessary to mitigate those effects.

67 e. The department shall, after according consideration to the
68 comments of the environmental commission and planning board of
69 the municipality and the planning board of the county wherein the

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70 land use is to take place, and the general public, issue a buffer
71 zone waiver only if it finds that the land use:

72 (1) Will have no adverse impacts on the freshwater wetlands,
73 and maintains the purposes set forth in subsection a. of this sec-
74 tion as well as the protection of endangered and threatened species
75 as listed by the department; or

76 (2) Is necessary to avoid an extraordinary hardship on the
77 applicant brought about by circumstances peculiar to the subject
78 property, or to meet a compelling need of such importance to the
79 public as to override the public intent in protecting freshwater
80 wetlands as established by this act, provided that the impact on
81 freshwater wetlands is minimized.

82 f. This waiver shall permit a reduction of the average buffer
83 zone distance by no more than 80% or to a minimum of 20 feet,
84 whichever is larger, except where the land use is a State, county or
85 local roadway, or a stormwater management facility, in which case
86 the waiver may permit further reduction of average buffer zone
87 distances if there is no prudent and feasible alternative location
88 and the roadway or stormwater management facility will result
89 in minimum feasible adverse impacts on the freshwater wetlands.

90 g. If the department determines and sustains proof that the
91 buffer zone distance as provided in subsection b. of this section is
92 insufficient to protect habitat critical to endangered or threatened
93 species as listed by the department or a major concentration of
94 wildlife or to sufficiently attenuate sedimentation and stormwater
95 impacts upon the wetlands, the department may require additional
96 average buffer zone distances up to 100 feet.

1 7. a. The department shall consolidate wetlands related aspects
2 of other regulatory programs which affect activities in freshwater
3 wetlands including, but not limited to, sewer extension approvals
4 required pursuant to P. L. 1977, c. 74 (C. 58:10A-1 et seq.), per-
5 mits required pursuant to P. L. 1973, c. 185 (C. 13:19-1 et seq.),
6 and any permits and approvals required pursuant to P. L. 1977,
7 c. 75 (C. 58:11A-1 et seq.) and P. L. 1962, c. 19 (C. 58:16A-50 et
8 seq.), with the freshwater wetlands permit process established
9 herein so as to provide a timely, consistent and coordinated permit
10 process.

11 b. Within 60 days after receipt of the completed application and
12 fee, the department may hold a hearing. If a hearing is held, it
13 shall be held in the county wherein the wetland is located, when-
14 ever practicable. The department may approve or disapprove a
15 permit application without a public hearing unless a person requests

16 a hearing, in writing, within 20 days after the publication of notice
17 of the permit application in the bulletin of the department.

18 c. If a hearing is not held, the department shall approve or
19 disapprove a permit application within 90 days following the date
20 that the application is deemed complete, or within 180 days of
21 submittal, whichever is sooner. If a hearing is held, the depart-
22 ment shall approve or disapprove the permit application, request
23 modification in the application, or deny the permit within 90 days
24 of the hearing. If the department approves the permit, the de-
25 partment shall send notice thereof to the applicant. If the depart-
26 ment denies, or requests a modification of, the permit application,
27 the department shall send notice thereof to the applicant. The
28 department may approve a permit imposing conditions necessary
29 for compliance with this act. If the department does not approve
30 or disapprove the permit within the time provided by this subsec-
31 tion, the permit shall be considered approved and the department
32 shall be considered to have made the determinations required under
33 subsection b. of section 5 of this act. The action taken by the de-
34 partment under this section may be appealed in accordance with
35 the "Administrative Procedure Act."

36 d. Fees for the freshwater wetlands permit and buffer zone
37 waiver shall be those established in sections 5 and 6 of this act,
38 plus the fees charged for those permits, as required, enumerated
39 in subsection a. of this section.

1 8. a. If a freshwater wetlands permit is denied, the owner of
2 record of the property affected may request, and the local tax
3 assessor shall provide that, this fact be taken into account when
4 the property is valued, assessed and taxed for property tax pur-
5 poses.

1 9. a. Any person may obtain review of a decision made pursuant
2 to sections 4, 5, 6, or 7 of this act by the Office of Administrative
3 Law by filing a petition with the Office in accordance with the
4 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
5 et seq.).

6 b. Any person may obtain judicial review of a decision made
7 pursuant to sections 4, 5, 6 or 7 of this act by filing a petition in
8 the Appellate Division of the Superior Court of New Jersey within
9 30 days after the approval or rejection. The court shall have the
10 power to make and enter an order enforcing, modifying, and en-
11 forcing as so modified, remanding for further specific evidence
12 or findings, or setting aside, in whole or in part, an action of the
13 department. The findings of fact on which the decision is based

14 shall be conclusive if supported by substantial evidence on the
15 record considered as a whole.

1 10. a. Whenever, on the basis of any information available to
2 him, the commissioner finds that any person is in violation of any
3 provision of this act, or any rule, regulation or permit issued
4 pursuant to this act he shall:

5 (1) Issue an order requiring any such person to comply in ac-
6 cordance with subsection b. of this section; or

7 (2) Bring a civil action in accordance with subsection c. of this
8 section; or

9 (3) Levy a civil administrative penalty in accordance with sub-
10 section d. of this section; or

11 (4) Bring an action for a civil penalty in accordance with sub-
12 section e. of this section; or

13 (5) Petition the Attorney General to bring a criminal action in
14 accordance with subsection f. of this section.

15 Use of any of the remedies specified under this section shall not
16 preclude use of any other remedy specified.

17 b. Whenever, on the basis of any information available to him,
18 the commissioner finds that any person is in violation of any pro-
19 vision of this act, or of any rule, regulation or permit issued pur-
20 suant to this act, he may issue an order: (1) specifying the pro-
21 vision or provisions of this act, or the rule, regulation or permit
22 of which he is in violation; (2) citing the action which caused such
23 violation; (3) requiring compliance with such provision or pro-
24 visions; and (4) giving notice to the person of his right to a hear-
25 ing on the matters contained in the order.

26 c. The commissioner is authorized to commence in a civil action
27 in Superior Court for appropriate relief from any violation of
28 this act or of a permit issued hereunder. Such relief may include,
29 singly or in combination:

30 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any investigation,
32 inspection, or monitoring survey which led to the establishment
33 of the violation, and for the reasonable costs of preparing and
34 litigating the case under this subsection;

35 (3) Assessment of the violator for any cost incurred by the
36 State in removing, correcting or terminating the adverse effects
37 upon the wetland resulting from any unauthorized activity for
38 which the action under this subsection may have been brought;

39 (4) Assessment against the violator of compensatory damages for
40 any loss or destruction of wildlife, fish or aquatic life, and for any

41 other actual damages caused by an unauthorized activity. Assess-
42 ments under this subsection shall be paid to the State Treasurer.
43 except that compensatory damages shall be paid by specific order
44 of the court to any persons who have been aggrieved by the un-
45 authorized discharge;

46 d. The commissioner is authorized to assess a civil penalty of
47 not more than \$10,000.00 for each violation and each day during
48 which such violation continues shall constitute an additional, sep-
49 arate and distinct offense. Any amount assessed under this sub-
50 section shall fall within a range established by regulation by the
51 commissioner for violations of similar type, seriousness and dura-
52 tion. No assessment shall be levied pursuant to this section until
53 after the discharger has been notified by certified mail or personal
54 service. The notice shall include a reference to the section of the
55 statute, regulation, order or permit condition violated; a concise
56 statement of the facts alleged to constitute a violation; a statement
57 of the amount of the civil penalties to be imposed; and a statement
58 of the party's right to a hearing. The ordered party shall have 20
59 days from receipt of the notice within which to deliver to the
60 commissioner a written request for a hearing. After the hearing
61 and upon finding that a violation has occurred, the commissioner
62 may issue a final order after assessing the amount of the fine
63 specified in the notice. If no hearing is requested, then the notice
64 shall become a final order after the expiration of the 20-day period.
65 Payment of the assessment is due when a final order is issued or
66 the notice becomes a final order. The authority to levy an admin-
67 istrative order is in addition to all other enforcement provisions
68 in this act, and the payment of any assessment shall not be deemed
69 to affect the availability of any other enforcement provisions in
70 connection with the violation for which the assessment is levied.
71 Any civil penalty assessed under this section may be compromised
72 by the commissioner upon the posting of a performance bond by
73 the violator, or upon such terms and conditions as the commissioner
74 may establish by regulation.

75 e. Any person who violates this act or an administrative order
76 issued pursuant to subsection b. or a court order issued pursuant
77 to subsection c., or who fails to pay an administrative assessment
78 in full pursuant to subsection d. shall be subject upon order of a
79 court to a civil penalty not to exceed \$10,000.00 per day of such
80 violation, and each day during which the violation continues shall
81 constitute a separate violation. Any penalty incurred under this
82 subsection may be recovered with costs in a summary proceeding

83 pursuant to "the penalty enforcement law" (N. J. S. 2A:58-1
84 et seq.). The Superior Court shall have jurisdiction to enforce
85 "the penalty enforcement law" in conjunction with this act.

86 f. Any person who willfully or negligently violates this act shall,
87 upon conviction, be guilty of a crime of the fourth degree and shall
88 be punished by a fine of not less than \$2,500.00 nor more than
89 \$25,000.00 per day of violation, or by imprisonment for not more
90 than one year or by both. Punishment for a second offense
91 under this subsection shall be a fine of not less than \$5,000.00 nor
92 more than \$50,000.00 per day of violation, or by imprisonment for
93 not more than two years, or both. Any person who knowingly
94 makes a false statement, representation, or certification in any
95 application, record, or other document filed or required to be main-
96 tained under this act shall, upon conviction, be subject to a fine
97 of not more than \$10,000.00 or by imprisonment for not more
98 than six months, or both.

99 g. In addition to the penalties prescribed in this section, a notice
100 of violation of this act shall be recorded on the deed of the property
101 wherein the violation occurred, on order of the commissioner, by
102 the clerk or register of deeds and mortgages of the county wherein
103 the affected property is located and with the clerk of the Superior
104 Court and shall remain attached thereto until such time as the vio-
105 lation has been remedied and the commissioner so orders.

1 11. The following activities are exempt from the provisions of
2 this act:

3 a. Agriculture management practices recommended pursuant to
4 P. L. 1983, c. 31 (C. 4:1C-1 et al.) on lands valued, assessed and
5 taxed pursuant to P. L. 1964, c. 48 (C. 54:4-23.1 et seq.) and actively
6 cultivated or used for production agriculture:

7 b. Regulated activities which have received individual permit
8 approval or a finding of no jurisdiction by the United States Army
9 Corps of Engineers pursuant to section 404 of the "Federal Water
10 Pollution Control Act" (33 U. S. C. § 1344), and which have re-
11 ceived a grant waiver pursuant to the "National Environmental
12 Policy Act of 1969," (42 U. S. C. ss. 4321 et seq.) and which have
13 received all freshwater wetlands related permits from, or ap-
14 provals by, the department, prior to the effective date of this act.

15 c. Areas regulated as a coastal wetland pursuant to P. L. 1970.
16 c. 272 (C. 13:9A-1 et seq.).

17 d. State or federally funded roads which are planned and de-
18 veloped in accordance with the "National Environmental Policy
19 Act of 1969," (42 U. S. C. ss. 4321 et seq.), section 404 of the

20 "Federal Water Pollution Control Act." (33 U. S. C. s. 1344) and
21 with Executive Order Number 53, approved October 5, 1973.

22 e. Regulated activities on land under the jurisdiction of the
23 Pinelands Commission pursuant to P. L. 1979, c. 111 (C. 13:18A-1
24 et seq.) provided the Pinelands Commission shall adopt regula-
25 tions to regulate activities in freshwater wetlands within its juris-
26 diction in a manner consistent with the purposes of this act.

27 f. Regulated activities on land under the jurisdiction of the
28 Hackensack Meadowlands Development Commission pursuant to
29 P. L. 1968, c. 404 (C. 13:17-1 et seq.).

30 g. The harvesting of peat for the commercial production of
31 peat moss.

1 12. a. The department may, after notice and opportunity for
2 a hearing, issue general permits on a Statewide or county basis
3 for the following categories of activities if the department deter-
4 mines that the activities will cause only minimal adverse environ-
5 mental impacts when performed separately, and will have only
6 minimal cumulative adverse impacts on the environment:

7 (1) Emergency activities carried out to protect the public health
8 and safety;

9 (2) Maintenance, reconstruction, or repair of roads or public
10 utilities lawfully existing prior to the effective date of this act or
11 permitted under this act;

12 (3) Maintenance or repair of active irrigation or drainage
13 ditches lawfully existing prior to the effective date of this act or
14 permitted under this act;

15 (4) Maintenance and repair of storm water management facili-
16 ties lawfully constructed prior to the effective date of this act or
17 permitted under this act;

18 (5) Maintenance, reconstruction or repair of buildings or struc-
19 tures lawfully existing prior to the effective date of this act or
20 permitted under this act;

21 (6) Appurtenant improvements or additions to residential dwell-
22 ings lawfully existing prior to the effective date of this act, pro-
23 vided that the improvements or additions require less than a cumu-
24 lative surface area of 750 square feet of fill and shall not result
25 in new alterations to the freshwater wetlands outside of the fill
26 area;

27 (7) An activity which would ordinarily be regulated under the
28 provisions of this act but which is proposed for a freshwater wet-
29 land less than three acres in size and not contiguous to a surface
30 water tributary;

31 (8) Water supply facilities planned, designed, acquired and con-
32 structed in a manner consistent with the New Jersey Statewide
33 Water Supply Plan.

1 13. a. The department shall, pursuant to the provisions of the
2 "Administrative Procedure Act," adopt rules and regulations to
3 carry out the provisions of this act.

4 b. The department shall, within one year of the effective date
5 of this act, adopt as a regulation a list of vegetative species which
6 are classified as hydrophytes, as defined in section 3 of this act,
7 which are indicative of freshwater wetlands and consistent with
8 the geographical regions of the State.

9 c. The department shall within 180 days of enactment of this
10 act, forward to the clerk of each municipality copies of the appro-
11 priate National Wetlands Inventory maps prepared by the United
12 States Fish and Wildlife Service for the State and direct the clerk
13 to notify the residents of the municipality of the availability for
14 inspection of these maps, by publication in a newspaper of general
15 circulation.

16 d. The department shall take appropriate action as necessary
17 to secure the assumption of the permit jurisdiction exercised by
18 the United States Army Corps of Engineers pursuant to the
19 "Federal Water Pollution Control Act," (33 U. S. C. s. 1344).

20 e. The department shall, within one year of the effective date
21 of this act, conduct a public education program on the provisions
22 of this act and its accompanying rules and regulations.

1 14. Counties, municipalities or any political subdivision thereof
2 shall not regulate activities in freshwater wetlands in a manner
3 inconsistent with the provisions of this act, but are encouraged
4 to control land uses in a manner that protects the long term via-
5 bility and public values of land regulated under this act.

1 15. a. The department shall, within two years of enactment of
2 this act, prepare and submit a report to the Governor, to the Presi-
3 dent of the Senate and the Speaker of the General Assembly, and
4 to the Senate Energy and Environment Committee and the Assem-
5 bly Environmental Quality Committee, or their designated suc-
6 cessors. The report shall describe:

7 (1) The success or failure of mitigation measures performed in
8 actual development situations, both within the State and in other
9 states, and the nature thereof, as well as the current state of the
10 art techniques used for mitigation;

11 (2) Recommendations for legislative or administrative actions
12 necessary to ensure the long term preservation of freshwater wet-

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13 lands from damage and degradation resulting from land use activi-
14 ties, pollution, and hydrologic changes which occur in upstream
15 regions of the same watersheds of particular freshwater wetlands.

16 b. The department shall submit, within 18 months of the enact-
17 ment of this act and after public hearing, a draft report containing
18 the findings and recommendations required in subsection a. of this
19 section. The information obtained at the public hearing shall be
20 considered in the final report.

1 16. The object, design, and purpose of this act being the pro-
2 tection of the freshwater wetlands resources of the State, this act
3 shall be liberally construed.

1 17. There is appropriated from the General Fund to the depart-
2 ment the sum of \$500,000.00.

1 18. This act shall take effect on the 180th day after enactment
2 except section 17 which shall take effect immediately. The depart-
3 ment shall take all appropriate actions necessary prior to the
4 effective date to implement the provisions of this act on the effec-
5 tive date.

STATEMENT

This bill provides for the systematic review of development activities in and around freshwater wetlands to better protect the citizens of the State from chemical contamination of water supplies, flood and storm damage, and depletion of natural resources which serve both recreation and commercial purposes. The bill requires that a proposal to dredge, fill, develop, or in any other way alter freshwater wetlands be accompanied by an application to the Department of Environmental Protection for a freshwater wetlands permit to engage in the activity.

The bill utilizes technical terms generally consistent with federal and State law and provides a procedure for identifying freshwater wetlands, describes the conditions under which certain activities may take place, and exempts those activities which will not harm the resource.

To prevent duplicative procedures with respect to freshwater wetlands already regulated, the bill exempts lands located in the pinelands areas as defined in section 10 of the "Pinelands Protection Act," P. L. 1979, c. 111 (C. 13:15A-11), those lands under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1 et seq.), and those areas regulated as coastal wetlands pursuant to P. L. 1970,

c. 272 (C. 13:9A-1 et seq.) from the requirements of the bill.

The bill specifically provides that a freshwater wetlands permit may be issued if the activity:

- (1) Requires access to water or freshwater wetlands or is water dependent as a central element of the basic function of the activity;
- (2) Has no prudent or feasible alternative site which does not involve freshwater wetlands;
- (3) Does not result in unacceptable disruption to wetland resources, and
- (4) Is in the public interest, is necessary to realize the benefits derived from the activity and is otherwise lawful.

The bill also provides for the regulation of the buffer area immediately adjacent to the wetlands.

Certain administrative and procedural provisions have been included to provide for regulatory efficiency and predictability. For instance a letter of interpretation as to whether the site of a proposed activity is in fact a freshwater wetland has been provided so as to clarify situations wherein freshwater wetland permits may or may not be required. Specific time limits have been established for the issuance for these letters of interpretation. Included in the provisions of the bill is a specific direction to the department to consolidate other related permits and approvals required by State law, with the freshwater wetlands permits process, and to take appropriate action to secure the delegation of the permit jurisdiction of the United States Army Corps of Engineers under the "Federal Water Pollution Control Act." This program is commonly referred to as the "404" program and provides limited regulation of wetland areas. Finally, the bill provides that the department must approve, conditionally approve or deny a permit application within 90 days of the submission of a complete application or within 180 days of the original submission of the application, whichever is sooner.

The bill appropriates \$500,000.00 to the Department of Environmental Protection.

The bill would take effect 180 days after enactment to provide the department with time to develop and adopt regulations to implement its provisions.

NATURAL RESOURCES

Provides for the systematic review of development activities in and around freshwater wetlands.

ASSEMBLY, No. 2499
STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblymen PENN, KAVANAUGH, Rocco, Foy, Haytaian, Moran, Singer, Rafferty, Assemblywoman Smith, Assemblymen Schuber, Hendrickson, Arango, Muziani, Miller, Dario, Assemblywoman Cooper, Assemblymen Brown, Kelly, Loveys, Zangari, Azzolina, Paterniti, Doyle, Deverin, Naples, Otlowski, Pelly, Assemblywoman Crecco, Assemblymen DiGaetano, Shusted, Kline, Assemblywoman Kalik, Assemblymen Riley, Felice, Assemblywoman Donovan, Assemblymen, Gargiulo, Marsella, Gorman, Bryant, Hudak, Doria, Karcher, Schwartz, Zecker, Palaia, Assemblywoman Randall, Assemblymen Colburn, Shinn, Thompson and Charles

AN ACT concerning the regulation of freshwater wetlands and enacting Chapter 9B of Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Freshwater
2 Wetlands Preservation Act."

1 2. a. The Legislature finds that large contiguous freshwater wet-
2 lands play an integral role in maintaining the quality of life through
3 material contributions to the water quality of the State, its econ-
4 omy, food supply, and fish and wildlife resources by:

5 (1) Protecting subsurface and potable drinking water sup-
6 plies by serving to purify surface water and groundwater
7 resources;

8 (2) Providing a natural means of flood and storm damage
9 protection through the absorption and storage of water dur-
10 ing high runoff periods and through the reduction of flood
11 crests, thereby protecting against the loss of life and property;

12 (3) Serving as a buffer zone between dry land and water
13 courses, thereby retarding soil erosion; and

14 (4) Providing essential breeding, spawning, nesting, and
15 wintering habitats for a major portion of the State's fish and
16 wildlife, including migrating birds, endangered species, and
17 commercially and recreationally important wildlife.

18 b. The Legislature further finds that:

19 (1) While the State has acted for the public benefit to
20 protect coastal wetland areas, it has not, except indirectly,
21 taken concomitant action to protect the State's inland water-
22 ways and wetlands; that in this the most densely populated
23 State, located in the Northeast corridor where pressures for
24 commercial and residential development define the pace and
25 pattern of land use, it is consistent with the public interests
26 to establish a program for the systematic review of activities
27 in freshwater wetlands areas to provide predictability in the
28 protection of the finite and valuable resource.

29 (2) In order to advance the public interest in a just man-
30 ner the rights of persons who own or possess real property
31 affected by this act must be fairly recognized and balanced
32 with public environmental interests.

33 (3) In an effort to preserve and protect freshwater wet-
34 lands areas it is important that the State secures as expe-
35 ditiously as possible the delegation of freshwater wetlands
36 permit jurisdiction currently exercised by the United States
37 Army Corps of Engineers pursuant to the "Federal Water
38 Pollution Control Act," (33 U. S. C. § 1344, et seq.).

1 3. As used in this act:

2 a. "Commissioner" means the Commissioner of the Department
3 of Environmental Protection;

4 b. "Department" means the Department of Environmental Pro-
5 tection;

6 c. "Environmental commission" means a municipal advisory body
7 created pursuant to P. L. 1968, c. 245 (C. 40:56A-1 et seq.);

8 d. "Freshwater wetland" means an area that is inundated or
9 saturated by fresh surface water on groundwater at a frequency
10 and duration sufficient to support, and that under normal circum-
11 stances does support a prevalence of vegetation typically adapted
12 for life in saturated soil conditions, commonly known as hydro-
13 phytic vegetation, and where a hydric soil condition simultaneously
14 exists, and where appropriate hydrologic conditions exist con-
15 sistent with a determination of hydrologic regime as defined below,
16 provided that any one of the following exists:

17 (1) it is contiguous to an inland lake or pond, or a river
18 or stream, or

19 (2) it is not contiguous to an inland lake or pond, or a river
20 or stream, and more than five acres in size, or

21 (3) it is not contiguous to an inland lake or pond, or a
22 river or stream, and five acres or less in size, if the commis-
23 sioner determines that protection of the area is essential to
24 the preservation of the natural resources of the State from
25 pollution, impairment or destruction.

26 Cultivated or disturbed hydric soils which do not contain
27 hydrophytic vegetation on the date of enactment of this act
28 shall not be considered a freshwater wetland.

29 Hydrologic regime shall be determined utilizing five foot
30 piezometer readings, from November to May, corrected for
31 unusual precipitation events. Under this approach, lands where
32 the water table is at or within 12 inches of the surface for
33 a significant portion of the growing season shall be considered
34 an appropriate hydrologic condition for a determination of
35 wetlands.

36 e. "Freshwater wetlands permit" means a permit to engage in
37 a regulated activity issued pursuant to the provisions of this act;

38 f. "Hydric soil condition" means soil that is saturated at or
39 near the soil surface with water that virtually is lacking in free
40 oxygen for significant periods during the growing season or soil
41 which is flooded frequently for long periods during the growing
42 season;

43 g. "Hydric soil" means the hydric soils listed for New Jersey
44 by the Soil Conservation Service of the United States Department
45 of Agriculture;

46 h. "Hydrophyte" means plant life adapted to growth and repro-
47 duction under saturated root zone conditions during a substantial
48 portion of the growing season;

49 i. "Linear Development" means land uses or utilities such as
50 roads, sewer lines, water lines, stormwater facilities or drainage
51 pipes, gas lines, electric lines, telephone lines and other transmis-
52 sion lines, and the right-of-way therefor, whose basic purpose is
53 to provide a utility service;

54 j. "Person" includes corporations, companies, associations, so-
55 cieties, firms, partnerships and joint stock companies as well as
56 individuals, unless restricted by the context to an individual as
57 distinguished from a corporate entity or specifically restricted to
58 one or some of the above enumerated synonyms and includes
59 agencies of this State, the United States, any other state of the

60 United States, and any foreign country or government lawfully
61 owning or possessing property within this State;

62 k. "Regulated activity" means the discharge of dredged or fill
63 material into a freshwater wetland such that it would alter a fresh-
64 water wetland.

1 4. A person proposing to engage in a regulated activity shall
2 apply to the department for a freshwater wetlands permit, for
3 a fee not to exceed the cost of processing the application, on forms
4 and in the manner prescribed by the commissioner pursuant to
5 the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
6 et seq.). An agency of the State proposing to engage in a regu-
7 lated activity also shall apply to the department for a freshwater
8 wetlands permit on forms and in a manner prescribed by the
9 commissioner, but shall not be required to pay a fee therefor. The
10 application shall include at least the following:

11 (1) A conceptual site plan depicting the proposed develop-
12 ment activities and a written description of the proposed
13 regulated activity, the total area to be modified, and the total
14 area of the freshwater wetlands to be affected;

15 (2) Verification that a notice has been forwarded to the
16 clerk, environmental commission and planning board of the
17 municipality, and the planning board of the county, and land-
18 owners within 200 feet of the proposed regulated activity which
19 notice may be filed concurrently with notices required pursuant
20 to P. L. 1975, c. 291 (C. 40:55D-1 et seq.) where in the regu-
21 lated activity is to occur, which notice shall describe the activity
22 and advise these instrumentalities of local government of their
23 opportunity to submit comments to the department;

24 (3) Verification that notice has been published in a news-
25 paper of local circulation;

26 (4) A statement detailing any potential adverse environ-
27 mental effects of the regulated activity and proposed mea-
28 sures to mitigate those effects.

1 5. a. Within 60 days after receipt of the completed application
2 and fee, the department may hold a hearing. If a hearing is held,
3 it shall be held in the county where the wetland on which the
4 permit is to apply is located. Notice of the hearing shall be made
5 in the same manner as for the promulgation of rules under the "Ad-
6 ministrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et
7 seq.). The department may approve or disapprove a permit
8 application without a public hearing unless the department de-
9 termines that the permit application is of significant impact to
10 warrant a public hearing.

11 b. If a hearing is not held, the department shall approve or
12 disapprove a permit application within 90 days following the
13 date that the application is deemed complete, or within 180 days
14 of submittal, whichever is sooner. If a hearing is held, the depart-
15 ment shall approve or disapprove the permit application within
16 90 days after the conclusion of the hearing. The department may
17 approve a permit application, request modifications in the appli-
18 cation, or deny the permit application. If the department approves
19 the permit application, the department shall prepare and send
20 the permit to the applicant. If the department denies, or requests
21 a modification of the permit application, the department shall
22 send notice of the denial or modification request, and the reasons
23 for the denial or the modifications requested to the applicant.
24 Department approval may include the issuance of a permit con-
25 taining conditions necessary for compliance with this act. If the
26 department does not approve or disapprove the permit applica-
27 tion within the time provided by this subsection, the permit appli-
28 cation shall be considered approved, and the department shall
29 be considered to have made the determinations required by sec-
30 tion 6. The action taken by the department may be appealed
31 pursuant to the "Administrative Procedure Act," P .L. 1968,
32 c. 410 (C. 52:14B-1 et seq.).

1 6. a. A permit for a regulated activity shall not be approved
2 unless the department determines that the issuance of a permit
3 is in the public interest, that the permit is necessary to realize
4 the benefits derived from the activity, and that the activity is
5 otherwise lawful.

6 b. In determining whether the activity is in the public interest,
7 the benefit which reasonably may be expected to accrue from the
8 proposal shall be balanced against the reasonably foreseeable
9 detriments of the activity. The decision shall reflect the national
10 and State concern for the protection of natural resources from
11 pollution and destruction. The following general criteria shall be
12 considered:

13 (1) The relative extent of the public and private need for
14 the proposed activity.

15 (2) Where there are unresolved conflicts as to resource
16 use, the practicability of using reasonable alternative loca-
17 tions and methods to accomplish the objective of the pro-
18 posed activity;

19 (3) The extent and permanence of the beneficial and/or
20 detrimental effects which the proposed activity may have on
21 the public and private uses to which the area is suited; and

22 (4) The economic value, both public and private, of the
23 proposed activity or land change to the general area.

24 c. In considering a permit application, the department shall
25 give serious consideration to findings of necessity for the pro-
26 posed activity which have been made by other State agencies.

27 d. A permit shall not be issued unless the applicant shows
28 either of the following:

29 (1) The proposed activity is primarily dependent upon
30 being located in the wetland; or

31 (2) A practicable alternative does not exist.

32 e. The department shall develop a general permit process for
33 the issuance of permits for linear development, provided that such
34 linear development would not have a significant adverse effect on
35 five acres or more of wetlands deemed of high quality as defined
36 in section 8 of this act.

1 7. a. The permit requirements of sections 5 and 6 of this act
2 shall be satisfied by the creation of new freshwater wetlands or
3 the enhancement or expansion of existing wetlands to produce
4 substitute wetlands whose size or ecological value is equivalent
5 to or greater than that of the predeveloped wetlands. Such crea-
6 tion, enhancement or enlargement of substitute freshwater wet-
7 lands shall be permitted on or off site. Such proposed mitigation
8 shall be evaluated by the department as part of the application
9 for a freshwater wetlands permit and shall not require a separate
10 permit application.

11 b. The commissioner shall also develop a program of mitigation,
12 enhancement or replacement opportunities on State owned lands
13 in order to:

14 (1) Maximize the environmental value of State owned
15 lands;

16 (2) Provide for mitigation opportunities where a prac-
17 ticable alternative does not exist at or near the location of
18 the regulated activity.

1 8. The department shall develop a classification system which
2 will rank or prioritize wetlands values so that they are regulated
3 consistent with the benefits they provide. As such, wetlands of
4 a high ranking may exhibit such qualities as: areas inhabited
5 with rare or endangered species listed in accordance with federal
6 statute or regulation; extremely high wildlife species diversity;
7 extremely high water quality characteristics; or extremely high
8 recreational values. Conversely, wetlands of a low ranking will
9 exhibit low or degraded values of those enumerated above.

1 9. The department shall consolidate other regulatory programs
2 which affect activities in freshwater wetlands including, but not
3 limited to, any permits and approvals required pursuant to P. L.
4 1977, c. 74 (C. 58:10A-1 et seq.), P. L. 1973, c. 185 (C. 13:19-1
5 et seq.), P. L. 1977, c. 75 (C. 58:11A-1 et seq.), P. L. 1962, c. 19
6 (C. 58:16A-50 et seq.) and P. L. 1977, c. 224 (C. 58:12A-1 et seq.),
7 with the freshwater wetlands permit process established herein
8 so as to provide for a timely, consistent and coordinated permit
9 process.

1 10. Any person may obtain judicial review of a decision made
2 pursuant to sections 4, 5, and 6 of this act by filing a petition in
3 the Law Division of the Superior Court of New Jersey within
4 30 days after the approval or rejection. The court shall have the
5 power to make and enter an order enforcing, modifying, and en-
6 forcing as so modified, remanding for further specific evidence
7 or findings, or setting aside, in whole or in part, an action of the
8 department. The findings of fact on which the decision is based
9 shall be conclusive if supported by substantial evidence on the
10 record considered as a whole.

1 11. The following activities are exempt from the provisions
2 of this act:

3 a. Agriculture management practices recommended pursuant to
4 P. L. 1983, c. 31 (C. 4:1C-1 et seq.) on lands valued, assessed and
5 taxed pursuant to P. L. 1964, c. 48 (C. 54:4-23.1 et seq.);

6 b. Emergency activities carried out to protect the public health
7 and safety;

8 c. Maintenance, reconstruction, or repair of roads or public
9 utilities lawfully existing prior to the effective date of this act;

10 d. Maintenance or repair of active irrigation or drainage ditches
11 lawfully existing prior to the effective date of this act;

12 e. Maintenance and repair of storm water management facilities
13 lawfully constructed prior to the effective date of this act;

14 f. Maintenance, reconstruction or repair of buildings or struc-
15 tures, and appurtenant or accessory uses, lawfully existing prior
16 to the effective date of this act; and

17 g. Site plans and subdivisions for which preliminary approval
18 has been applied for or received pursuant to the provision of P. L.
19 1975, c. 251 (C. 40:55D-1 et seq.) prior to the effective date of this
20 act, and which have received final approval thereof within six
21 years of enactment of this act.

22 h. State or federally funded roads which are planned and
23 developed in accordance with the "National Environmental Policy

24 Act of 1969," P. L. 91-190 (42 U. S. C. § 4321 et seq.) or with
25 Executive Order Number 53, approved October 5, 1973, except that
26 this exemption shall expire three years after the date of enactment
27 of this act or when the department secures the delegation of, or the
28 general permit to carry out the permit jurisdiction exercised by,
29 the United States Army Corps of Engineers pursuant to the
30 "Federal Water Pollution Control Act" (33 U. S. C. § 1344.)
31 whichever is earlier;

32 i. Regulated activities which have received approval by the
33 United States Army Corps of Engineers pursuant to section 404
34 of the "Federal Water Pollution Control Act" (33 U. S. C. § 1344),
35 and which have received a grant waiver pursuant to the "National
36 Environmental Policy Act of 1969" (42 U. S. C. § 4321 et seq.), or
37 which have received all freshwater wetlands related permits from,
38 or approvals by the department, prior to the effective date of the
39 act.

1 12. The department shall make application to secure the delega-
2 tion of, or a general permit to carry out, the permit jurisdiction
3 exercised by the United States Army Corps of Engineers pursuant
4 to the "Federal Water Pollution Control Act" (33 U. S. C. § 1344)
5 within six months of enactment of this act.

1 13. If a person violates this act, the Department of Environ-
2 mental Protection may institute a civil action in the name of the
3 State in a court of competent jurisdiction for injunctive relief to
4 enforce this act and to prohibit and prevent that violation, and the
5 court may proceed in the action in a summary manner. A person
6 who violates this act is subject to a penalty of not less than \$250.00
7 nor more than \$3,000.00 for each offense, to be collected in a civil
8 action by a summary proceeding under "the penalty enforcement
9 law" (N. J. S. 2A:58-1 et seq.), or in any case before a court of
10 competent jurisdiction wherein injunctive relief had been re-
11 quested. The Law Division of the Superior Court shall have
12 jurisdiction to enforce "the penalty enforcement law." If the
13 violation is of a continuing nature, each day during which it con-
14 tinues constitutes an additional, separate, and distinct offense.

1 14. a. The department shall, pursuant to the provisions of the
2 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1
3 et seq.), adopt procedural rules to carry out the provisions of this
4 act.

5 b. The department shall, within one year of the effective date of
6 this act, adopt as a regulation a list of vegetative species which are
7 classified as hydrophytes, as defined in section 3 of this act, which

8 are indicative of freshwater wetlands and consistent with the
9 geographical regions of the State.

1 15. The department shall, within one year of the effective date
2 of this act, conduct a public education program on the provisions
3 of this act and its accompanying rules and regulations.

4 a. The department shall make or cause to be made a preliminary
5 inventory of all freshwater wetland areas in this State on a county
6 by county basis and file the inventory with the register of deeds,
7 county clerk, and municipal clerk, which inventory shall be mapped
8 at a scale of one inch equals 200 feet.

9 b. A hearing shall be held by the department after publication
10 and due notice so that interested parties may comment on the
11 inventory. After the hearing the department shall issue a final
12 inventory which shall be sent and kept by the register of deeds,
13 county clerk and municipal clerk. Legislators shall receive an
14 inventory of a county or regional classification for their districts
15 including both preliminary and final inventories unless the legis-
16 lators request not to receive the materials.

17 c. Before an inventory is made of a county, interested persons
18 may request the department to inspect property and the depart-
19 ment shall make a written wetland determination. The determina-
20 tion shall be made within 20 days after the request. Completion of
21 the inventory shall not delay implementation of this act.

1 16. a. As inventories of wetland are completed, the inventories
2 shall be used as one of the criteria by the department in issuing
3 permits. The inventories shall be periodically updated every five
4 years. The maps, ground surveys and description of wetlands
5 included in the inventories shall be submitted to the respective
6 county register of deeds and shall become a public document
7 available to review by any member of the public.

8 b. Aerial photographs and satellite telemetry data reproductions
9 shall be made available to the respective county register of deeds
10 for cost as determined by the department.

1 17. As wetland inventories are completed as specified in section
2 14, owners of record as identified by the current property tax roll
3 shall be notified of the possible change in the status of their
4 property. Notification shall be printed on the next property tax bill
5 mailed to property owners in the county. It shall contain informa-
6 tion specifying that a wetland inventory has been completed and
7 is on file with the register of deeds, county clerk and municipal
8 clerk, and that property owners may be subject to regulation
9 under this act.

1 18. a. This act shall not be construed to abrogate rights of
2 authority otherwise provided by law.

3 b. For the purposes of determining if there has been a taking of
4 property without just compensation under New Jersey law, an
5 owner of property who has sought and been denied a permit or has
6 been made subject to modification or conditions in the permit under
7 this act or the department's action or inaction pursuant to this
8 act may file an action in a court of competent jurisdiction.

9 c. If the court determines that an action of the department
10 pursuant to this act constitutes a taking of the property of a
11 person then the court shall order the department, at the depart-
12 ment's option, to do one or more of the following:

13 (1) Compensate the property owner for the full amount of
14 the lost value.

15 (2) Purchase the property in the public interest as deter-
16 mined before its value was affected by this act or the depart-
17 ment's action or inaction pursuant to this act.

18 (3) Modify its action or inaction with respect to the prop-
19 erty so as to minimize the detrimental effect to the property's
20 value.

21 d. For the purposes of this section, the value of the property
22 may not exceed that share which the area in dispute occupies in
23 the total parcel of land, of the State equalized evaluation of the
24 total parcel, multiplied by two, as determined by an inspection of
25 the most recent assessment roll of the township or city in which
26 the parcel is located.

1 19. There is appropriated to the department, the sum of \$2
2 million to carry out the provisions of this act.

1 20. This act shall not take effect until such time as the delegation
2 of, or a general permit to carry out, the permit jurisdiction exer-
3 cised by the United States Army Corps of Engineers pursuant to
4 the "Federal Water Pollution Control Act" (33 U. S. C. § 1344.)
5 has been secured by the State of New Jersey, except that sections
6 14, 15, 18 and 19 shall take effect immediately. From the date of
7 enactment of this act, until such delegation occurs, all freshwater
8 wetlands jurisdictional and regulatory determinations shall be
9 made by the United States Army Corps of Engineers. The depart-
10 ment shall take all actions necessary prior to the effective date to
11 implement the provisions of this act on the effective date.

A 2499 (1986)

11

SPONSOR'S STATEMENT

This bill, known as the "Freshwater Wetlands Preservation Act," establishes a comprehensive system to protect, preserve and regulate the state's valuable freshwater wetlands.

The bill is modeled after a wetlands preservation law in Michigan, the only state allowed by the federal government to assume regulation of wetlands under the "Federal Water Pollution Control Act." The legislation is designed to regulate wetlands development in an economically-feasible and environmentally-sound manner.

The bill provides for a systematic review and management of freshwater wetlands by the Department of Environmental Protection, beginning with a thorough inventory and classification of freshwater wetlands to serve as the criteria for consideration of permit issuance.

The bill establishes a permit process in the department, designed to meet federal standards for state assumption of regulatory responsibilities and to eliminate duplicative permit procedures. The legislation appropriates \$2,000,000.00, the present annual cost of federal regulation of freshwater wetlands in New Jersey, to the department to implement the preservation act.

The bill exempts a number of wetlands activities, including certain agriculture management practices, emergency activities to protect the public health and safety, and maintenance and reconstruction of roads and buildings lawfully existing prior to the effective date of this act.

The bill establishes an equitable mitigation program and freshwater wetlands classification rating system under the management of the commissioner of the department, to provide fair compensation for the environmental value of freshwater wetlands affected by the granting of a department permit.

The bill would take effect upon delegation of the permit jurisdiction of the United States Army Corps. of Engineers under section 404 of the "Federal Water Pollution Control Act."

NATURAL RESOURCES

Provides for the regulation of freshwater wetlands by the State.

ASSEMBLY ENERGY AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY Nos. 2342 and 2499

STATE OF NEW JERSEY

DATED: DECEMBER 8, 1986

The Assembly Energy and Natural Resources Committee favorably reported Assembly Committee Substitute for Assembly Bill Nos. 2342 and 2499.

In attempting to reconcile the legitimate but often conflicting goals of protecting a vital natural resource and maintaining economic growth, the substitute bill represents a compromise between the two bills, as introduced, in several key areas. First, throughout the bill changes were made to make the bill consistent with the section 404 of the "Federal Water Pollution Control Act" under which the U. S. Army Corps of Engineers issue permits for dredge and fill activities in wetlands, commonly referred to as the "404 program." This was done to expedite assumption of the 404 program by the State within a year of the bill's enactment. However, if the assumption process takes longer than a year, the Department of Environmental Protection and the Governor would take specific actions to provide notice to the Legislature and the public as to when assumption would occur.

Thus, for instance, the criteria for review of activities in and around freshwater wetlands is consistent with the "404 b. (1) guidelines," the regulations adopted by the Army Corps of Engineers. A determination must be made as to whether a practicable alternative to the activity exists in a nonfreshwater wetland area; whether the activity is in the public interest; whether the activity would cause ground or surface water degradation; would jeopardize threatened or endangered species; and, whether the activity would result in minimum feasible alteration of the wetland resource. In addition the bill is consistent with the 404 program in that it provides for the same exemptions as are included in the federal program; provides for a notification process rather than a full blown permit process for activities given like treatment at the federal level; provides for temporary emergency permits; and, grants enforcement powers to the department consistent with the powers of the federal government.

The bill is dissimilar to the federal program in that it applies to a broader range of activities in freshwater wetlands than the 404 program; requires transition areas between the freshwater wetland and

upland activities in an effort to further protect freshwater wetlands; establishes a wetlands classification system to rank wetland values; and establishes a Wetlands Mitigation Council to review and approve mitigation methods for reduction of wetland damage or replacement of wetland values at other locations.

The classification system ranks wetlands according to ecological value for the purpose of determining the size of the transition area and assessing the type and care that should be taken with respect to methods of mitigation. Thus, wetlands of exceptional resource value receive larger (between 150 to 75 feet) transition areas than do those of intermediate resource value (between 50 to 25 feet). Those of ordinary resource value would require no transition areas. The purpose of a transition area is to serve as: (1) Ecological transition zone from uplands to wetlands which is an integral portion of the wetlands ecosystem, providing temporary refuge for wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in wetlands, and slight variations of wetland boundaries over time due to hydrologic or climatologic effects; and (2) Sediment and storm water control zone to reduce the impacts of development upon wetlands and wetlands species. Proposals for development activities within these distances to the wetland would be eligible for transition area waivers if: no significant adverse effect would occur from the activity; the activity maintains the purposes of the transition area; and the activity is necessary to avoid an extraordinary hardship on the applicant or to meet a compelling public need which supersedes the public need to preserve the wetland.

In addition, the bill permits a developer to submit a transition area averaging plan which would permit further reduction of the transition area if the remaining transition area serves the purposes of the transition area. The underlying assumption behind this averaging plan is that the purposes of the transition area can still be maintained in certain circumstances if the project is designed correctly, even though a freshwater wetland is not protected at all points by the distances established in the bill.

Finally, with respect to transition areas, a density bonus is provided for that portion of the transition area exceeding setbacks established in the zoning ordinance of the municipality wherein the activity is to take place. The density bonus, equal to the development opportunity lost, would be redeemed on the balance of the property contained within the "application for development" under the "Municipal Land Use Law" not regulated as a freshwater wetland or transition area. "Development opportunity lost" is defined in the bill to mean the development potential of a parcel of property as provided in the municipal zoning ordinance excluding any setbacks established therein.

A taking without compensation has occurred if this development opportunity cannot be redeemed in the municipality wherein the activity is proposed. In such a case, the State would be directed to compensate the property owner for the full amount of the lost value or purchase the property in the public interest as determined before its value was affected by the act.

The bill appropriates \$60,000.00 to the department for the purpose of focusing the activities of the department so that the assumption process can indeed occur within the year.

SENATE ENERGY AND ENVIRONMENT COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY Nos. 2342 and 2499

STATE OF NEW JERSEY

DATED: JUNE 25, 1987

I

The Senate Committee Substitute for Assembly Bill Nos. 2342 and 2499 ACS establishes a comprehensive program designed to regulate development activities in freshwater wetlands and in areas adjacent to environmentally sensitive freshwater wetlands. The intent of this legislation is to protect and preserve freshwater wetlands, which serve important water purification, flood control, water storage, and wildlife preservation functions. The program established by this bill would be implemented by the Department of Environmental Protection, and any person proposing to undertake a development activity in a freshwater wetland, or in a transition area adjacent to an environmentally sensitive freshwater wetland, would be required to apply for and receive a permit from the department.

This bill is also intended to provide the State of New Jersey with the statutory authority necessary to assume the implementation of the federal wetlands protection program, which is currently implemented by the U. S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act. Accordingly, this bill includes provisions which the United States Environmental Protection Agency (EPA), which oversees the transfer of the federal wetlands program to the states, has deemed necessary for New Jersey to assume the implementation of the federal program.

This bill establishes a freshwater wetlands regulatory program that is in most respects consistent with the existing federal program. In two key areas, however, the program established in this bill is more stringent than the federal program: this bill would regulate more development activities in the freshwater wetlands than are regulated under the federal program, and would also regulate development in transition areas adjacent to certain freshwater wetlands.

II

FRESHWATER WETLANDS PERMITS

This bill would require any person to apply for and obtain a permit from the department before commencing any of the following activities in a freshwater wetland: soil excavation; drainage activities; filling activities; pile driving; placement of obstructions; or any activity which would destroy plant life. An applicant for such a permit would be required to submit the proposed project to a number of tests. If the proposed project is "water-dependent" (i.e., it requires access to the freshwater wetland as a central element of its basic function), the applicant would be required to show that there is no alternative site for the project that would not involve a freshwater wetland. If the proposed project is not water-dependent, the applicant would be required to rebut a presumption that there is a practicable alternative to the project which would not involve a freshwater wetland. To rebut this presumption, an applicant would be required to show that the project cannot be accomplished at another site not in a wetland, that a scaled-down project that would have a less adverse impact on the wetlands would not accomplish the basic purpose of the project, and that reasonable attempts have been made to accommodate zoning restrictions governing other possible sites for the project. Additionally, if the project involves a freshwater wetland of exceptional resource value (discussed below), the applicant would be required to demonstrate a compelling public need for the project. Applicants would also be required to demonstrate that a proposed project (either a water-dependent or nonwater-dependent project) would be in the public interest, would result in minimal alteration of the aquatic ecosystem, and would not jeopardize any threatened or endangered species, cause a violation of a water quality or discharge standard, or degrade surface or ground water.

III

TRANSITION AREAS/CLASSIFICATION OF WETLANDS

This bill also would require that transition areas adjacent to freshwater wetlands be established, and that a permit, or transition area waiver, be secured from the department for undertaking certain development activities in these areas. The transition area is an integral component of the wetlands ecosystem, providing a habitat for plants and animals, and a sediment and storm water control zone for reducing the impacts of development on wetlands and wetlands species. The following activities in a transition area would require a transition area waiver from the department: soil excavation; filling; erection of structures (except temporary structures of less than 150 square feet); paving; or destruction of plant life. A transition area waiver would

not be required for routine and temporary construction activities or for routine maintenance. The department would issue a transition area waiver only upon a determination that the proposed activity would have no substantial environmental impact on the freshwater wetland, or that denial would impose substantial hardship on the applicant.

The size of a transition area would be determined by the department on the basis of the resource value of the specific wetland. The bill establishes three categories of freshwater wetlands: exceptional resource value, intermediate resource value, and ordinary resource value. A freshwater wetland would be classified as an exceptional resource value wetland if it discharges into trout production streams or tributaries (which are the most pristine waters in the State), or is the present or former and documented habitat of a threatened or endangered species. A transition area of 75-150 feet would be required for an exceptional resource value wetland. Wetlands of ordinary resource value would be isolated wetlands, man-made drainage ditches, swales, or detention facilities. Wetlands of intermediate resource value are wetlands that are neither "exceptional" nor "ordinary." A transition area of 25 to 50 feet would be required for a wetland of intermediate resource value. No transition area would be required for a wetland of ordinary resource value. This bill would also permit an applicant for a transition area waiver to alter the dimensions of a required transition area by receiving the approval by the department of a transition area averaging plan. Under a transition area averaging plan the required extent of the transition area for a portion of a site could be reduced if the transition area for another portion of the site was proportionally extended. An averaging plan altering the configuration of a transition area would be approved if the resulting transition area fulfills the basic ecological function of a transition area.

IV

LETTERS OF INTERPRETATION

Prior to applying to the department for a permit to conduct a development activity in a wetland, or for a transition area waiver, a person may request a letter of interpretation from the department confirming that a site of proposed development is or is not in a freshwater wetland or a transition area. In general, the department would be required to issue a letter of interpretation within 30 days of a request, but this deadline could be extended by 45 days if the department requires or conducts an onsite inspection to delineate a wetlands or transition area boundary line. Any letter of interpretation issued by the department stating that a site is not in a freshwater wetland would be subject to modification or revocation by the EPA.

V MITIGATION

This bill authorizes the department to require the creation or restoration of wetlands to compensate for any wetlands destroyed as a result of a project in a freshwater wetland permitted by the department. The department's evaluation of a mitigation project, however, would be conducted independently of its evaluation of the application for a wetlands permit and in consultation with the EPA. If the department requires an applicant for a wetlands permit to create or restore a wetland as a condition of a permit, it may also permit the applicant to contribute to the Wetlands Mitigation Bank (established in this bill) in lieu of restoring or creating a wetland. The Wetlands Mitigation Bank is to be administered by a seven-member Wetlands Mitigation Council appointed by the Governor with the advice and consent of the Senate. The council would be responsible for financing freshwater restoration and creation projects with funds contributed to the Wetlands Mitigation Bank.

VI EXEMPTIONS

Three geographical areas of the State already subject to State land use regulation generally would be exempt from the provisions of this bill: the area under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1 et seq.), the area under the jurisdiction of the Pinelands Commission pursuant to P. L. 1979, c. 111 (C. 13:18A-1 et seq.), and coastal wetlands regulated pursuant to "The Wetlands Act of 1970," P. L. 1970, c. 272 (C. 13:9A-1 et seq.). This exemption is not absolute, however, because development activities in these areas would be required to meet the criteria of the federal wetlands program as implemented by either the U. S. Army Corps of Engineers or the department (after assumption of the federal program). In addition, farming, ranching, and forestry activities would not be subject to the provisions of this bill, nor would projects that have received preliminary local approvals prior to the effective date of this bill, projects for which a preliminary site plan was submitted for local approval prior to June 8, 1987 (the date of Executive Order 175 of 1987 imposing a moratorium on development in freshwater wetlands), and projects for which a federal freshwater wetlands permit has been received from the U. S. Army Corps of Engineers prior to the effective date of this bill.

VII

GENERAL AND EMERGENCY PERMITS

This bill authorizes the Department of Environmental Protection to issue general permits for certain categories of activities that would have minimal adverse environmental impact on freshwater wetlands. A person proposing to conduct an activity covered under a general permit would normally be required only to give the department 30 days notice of intent to conduct the activity. The department is authorized to issue general permits for: activities that involve one acre or less of an isolated wetland, or one acre or less of a man-made drainage ditch or swale; maintenance of roads, public utilities, and stormwater management facilities; maintenance, reconstruction and moderate size improvements to existing dwellings; mosquito management activities; and State or federally funded roads permitted by the Army Corps of Engineers. The department would retain authority to review any activity conducted under a general permit, and require an application for an individual permit if warranted by the specific nature of the activity.

This bill also authorizes the department to issue emergency permits for activities in a freshwater wetland if an unacceptable threat to life or a severe loss of property would otherwise result. These emergency permits would generally be valid for 90 days.

VIII

IMPLEMENTATION SCHEDULE

The freshwater wetlands regulatory program established in this bill would be phased in over two years. This bill, if enacted into law, would take effect one year after enactment, with several important exceptions. The sections of the bill imposing the transition area requirements would not take effect until two years after enactment. Also, the department is directed to complete two key activities within nine months of enactment (i.e., three months prior to the effective date): the adoption of the rules and regulations necessary to implement the bill, and the adoption of a list of vegetative species to be used to identify freshwater wetlands. Also, within six months of enactment (i.e., six months prior to the effective date) the department is required to transmit to each municipality in the State copies of the appropriate United States Fish and Wildlife Service wetlands maps, for use by the municipality in identifying wetlands areas. This bill also requires the department to make an initial application to the EPA for assumption of the federal wetlands program within one year of enactment, and also requires the department, during the period between the effective date of this bill and the assumption of the federal program,

to implement the State wetlands program in close coordination with the Army Corps of Engineers. To avoid duplicative wetlands regulations within the State, this bill, on its effective date, would preempt any local ordinance enacted prior to the effective date, and would prohibit the adoption of any local wetlands ordinance after the effective date.

IX

MISCELLANEOUS PROVISIONS

This bill would permit any person to request an administrative hearing on any decision by the Department of Environmental Protection to approve or deny a freshwater wetlands permit. The hearing would be conducted by the Office of Administrative Law, with the department retaining the right to affirm, reject or modify the decision of the administrative law judge. This bill would also direct the department to consolidate all wetlands regulatory programs. Also, this bill permits any person with property affected by the wetlands program to initiate legal action to determine if a decision made by the department in implementing the program constitutes a taking of property without just compensation. This bill also provides penalties for violations of the provisions of this bill comparable to the penalties for violations of the "Water Pollution Control Act," P. L. 1977, c. 74 (C. 58:10A-1 et seq.), and authorizes the department to enter any premises or property to determine compliance with the provisions of this bill. Finally this bill appropriates \$60,000.00 to the Department of Environmental Protection to prepare for the implementation of the bill on its effective date.

PUBLIC BILL SIGNING: WETLANDS BILL SIGNING
TRENTON, NEW JERSEY
WEDNESDAY, JULY 1, 1987

Assembly Bills 2342/2499

I AM EXTREMELY HAPPY TO BE HERE TODAY. ON MONDAY THE ASSEMBLY AND THE SENATE, IN THE WORDS OF TWO FAMOUS AMERICAN ACTORS, "MADE MY DAY." HECK, THEY MADE MY ENTIRE SUMMER.

THIS IS ONE OF THOSE SPECIAL OCCASIONS WHEN WE CAN ACTUALLY REACH OUT AND TOUCH THE FUTURE. BY SIGNING THIS LEGISLATION WE ARE NOT ONLY PROTECTING OUR FISH, FOWL, SWAMPS AND WOODLANDS TODAY, WE ARE MAKING LIFE A LITTLE BETTER FOR THE UNBORN GENERATIONS WHO WILL CALL NEW JERSEY HOME TOMORROW.

THAT IS WHY THIS BILL IS ONE OF THE MOST IMPORTANT PIECES OF ENVIRONMENTAL LEGISLATION EVER ENACTED IN THIS STATE.

THIS LEGISLATION WILL PROTECT FROM HAPHAZARD DEVELOPMENT 300,000 ACRES OF FRESHWATER WETLANDS, WHICH COVER ABOUT SIX PERCENT OF THE STATE'S LAND MASS. IT WILL HELP KEEP OUR WATER CLEAN, PROTECT AGAINST FLOODING, PRESERVE THE HABITAT FOR ENDANGERED SPECIES AND PROVIDE A SAFE HOME FOR MANY FISH AND BIRDS.

THIS IS A RESPONSIBLE BILL, ONE THAT ACHIEVES THE DELICATE BALANCE BETWEEN ECONOMIC GROWTH AND ENVIRONMENTAL PROTECTION. I HAVE ALWAYS BELIEVED THERE SHOULD BE ROOM IN THIS STATE FOR BOTH THE BULLDOZER AND THE BLUE HERON.

LET ME BRIEFLY MENTION THREE HIGHLIGHTS.

UNDER THE CURRENT 404 PROGRAM, THE ARMY CORPS OF ENGINEERS REGULATES ONLY FILLING IN FRESHWATER WETLANDS. THE NEW PROGRAM, WHICH WILL BE ADMINISTERED BY THE STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION, WILL COVER EVERY ACTIVITY IN THE WETLANDS, FROM MOVING SAND TO DREDGING SOIL.

THE NEW LAW ESTABLISHES THREE CATEGORIES OF WETLANDS: THOSE OF EXCEPTIONAL RESOURCE VALUE, INTERMEDIATE RESOURCE VALUE, AND ORDINARY RESOURCE VALUE. IT PROTECTS THE IMPORTANT BUFFER ZONES SURROUNDING EACH CATEGORY OF WETLANDS ACCORDING TO THEIR DEGREE OF ENVIRONMENTAL SENSITIVITY.

FINALLY, THIS BILL RETAINS LOCAL CONTROL OVER THE WETLANDS UNTIL THE EFFECTIVE DATE OF THE BILL A YEAR FROM NOW.

AS YOU KNOW, THIS BILL WAS THE RESULT OF ARDUOUS NEGOTIATION AND COMPROMISE. IT TOOK ALMOST FOUR YEARS TO WIND ITS WAY THROUGH THE LABYRINTH OF THE LEGISLATIVE PROCESS. I WANT TO THANK A FEW OF THE LEGISLATORS WHOSE WORK MADE IT POSSIBLE.

IS NO MORE FRIEND OF THE ENVIRONMENT IN NEW
AN MAUREEN O' SHE WAS THE LONE VOICE FOR
PROTECTION BACK WHEN A GREAT NUMBER OF PEOPLE THOUGHT
SWAMPS WERE USELESS MUCK BETTER PAVED THAN PROTECTED. THIS
BILL, I BELIEVE, BE HER MOST ENDURING LEGACY TO THE PEOPLE
OF NEW JERSEY.

I WANT TO THANK SENATOR DAN DALTON. OVER THE PAST FEW
WEEKS, DAN HAS DONE AS MUCH AS ANY LEGISLATOR TO SIT DOWN WITH
DEVELOPERS AND ENVIRONMENTALISTS AND FORGE A RESPONSIBLE BILL.
HE WORKED QUICKLY AND HE WORKED RESPONSIBLY. QUITE SIMPLY, THIS
BILL WOULD NOT HAVE REACHED MY DESK WITHOUT HIS ASSISTANCE.

I ALSO WANT TO NOTE THE CONTRIBUTION OF SENATOR JOHN LYNCH
AND ASSEMBLYMAN JACK PENN. THEY KEPT THE WETLANDS ISSUE AT
THE TOP OF THEIR LEGISLATIVE AGENDA THROUGH SOME VERY TRYING
CIRCUMSTANCES.

AND I WOULD BE REMISS TO NOT APPLAUD THE HARD WORK OF MY
ASSISTANT COUNSEL, JANE KELLY. THE LEGAL ISSUES SURROUNDING
WETLANDS PROTECTION CAN BE AS MURKY AS THE SWAMPS AND BOGS
THEMSELVES. JANE HAS BEEN ABLE TO INTERPRET THESE ISSUES. HER
COUNSEL HAS BEEN INVALUABLE, JUST AS IT WAS ON OUR LANDMARK
RECYCLING LEGISLATION.

AFTER I PUT MY PEN TO THIS LEGISLATION, I WILL ALSO SIGN AN
EXECUTIVE ORDER RESCINDING MY EXECUTIVE ORDER OF JUNE 8, WHICH
FROZE ALL DEVELOPMENT IN THE WETLANDS. THAT ORDER LASTED ABOUT
AS LONG AS THE SPINKS-COONEY FIGHT. I AM VERY HAPPY ABOUT ITS
BRIEF DURATION. I WANT TO PUBLICLY THANK SENATE PRESIDENT JOHN
RUSSO AND SPEAKER CHUCK HARDWICK FOR GIVING THIS IMPORTANT
LEGISLATION THE SPEEDY APPROVAL IT DESERVED, SO THAT THE
MORATORIUM CAN NOW BE LIFTED.

WORKING HERE IN TRENTON, IT IS SOMETIMES EASY TO LOSE SIGHT
OF THE PURPOSE OF THIS GREAT ENTERPRISE OF GOVERNMENT.

BOGGED DOWN IN HORSE TRADING OR THE COMPLEX MINUTIA OF
LEGISLATION, WE MAY LOSE SIGHT OF THE FACT THAT THE ACTIONS WE
TAKE TODAY WILL HAVE IMPORT FOR OUR CHILDREN AND OUR CHILDREN'S
CHILDREN.

THIS LEGISLATION WILL HELP ENSURE THAT FUTURE GENERATIONS
CAN ENJOY THE SAME CLEAN WATER, THE SAME NATURAL BEAUTY THAT WAS
PASSED ON TO US BY OUR PARENTS.

SOLOMON SAID IT BEST IN ECCLESIASTES WHEN HE WROTE,
"ONE GENERATION PASSETH AWAY AND ANOTHER GENERATION COMETH:
BUT THE EARTH ABIDETH FOREVER."

OUR GENERATION WILL PASS FROM THIS EARTH. BUT BY SIGNING
THIS LEGISLATION TODAY, WE ARE MAKING SURE THAT THE PRECIOUS
WETLANDS WILL ABIDETH FOREVER.

THAT IS AN AWESOME GIFT TO GIVE.

I WILL NOW SIGN THE BILL.

