

[First Reprint]

ASSEMBLY, No. 3072

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2008

Sponsored by:

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

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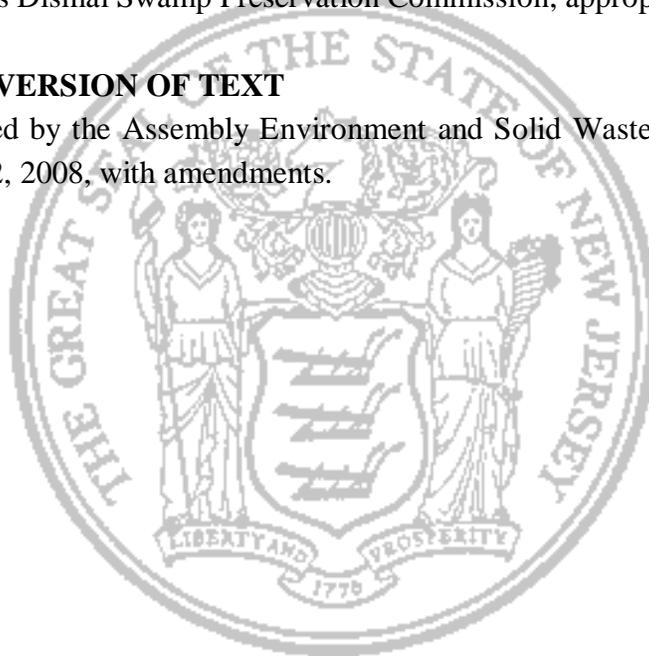
Assemblymen Green, Chivukula, Wisniewski, Vas and Gusciora

SYNOPSIS

Establishes Dismal Swamp Preservation Commission; appropriates \$95,000.

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on September 22, 2008, with amendments.



(Sponsorship Updated As Of: 9/23/2008)

1 AN ACT establishing the Dismal Swamp Preservation Commission,
2 supplementing Title 40 of the Revised Statutes, and making an
3 appropriation.

4

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

7

8 1. This act shall be known and may be cited as the “Dismal
9 Swamp Preservation Act.”

10

11 2. The Legislature finds and declares that:

12 a. The Dismal Swamp Conservation Area in Middlesex County
13 is approximately 660 acres of freshwater wetlands, forested
14 uplands, and meadows in a densely populated, highly developed
15 central part of the State, offering unique natural habitat including
16 federal priority wetlands;

17 b. The Dismal Swamp Conservation Area is a birding oasis in a
18 densely developed region of the State where over 175 different bird
19 species have been spotted including the threatened and endangered
20 grasshopper sparrow and yellow-crowned night-heron;

21 c. In addition to over 175 bird species, 25 mammals and over a
22 dozen reptile and amphibian species have been sighted in the
23 Dismal Swamp Conservation Area;

24 d. Archeological digs in the Dismal Swamp Conservation Area
25 have uncovered at least five significant archeological sites,
26 including one at least 10,000 years old;

27 e. This area, spanning Edison Township, Metuchen Borough,
28 and South Plainfield Borough in Middlesex County, represents one
29 of the last remaining wetland ecosystems in a highly urbanized
30 environment in the State;

31 f. The area consists of privately and publicly owned parcels of
32 land within three municipalities, each with its own planning and
33 zoning authority, and as a result, decisions concerning development
34 within the area are made without a coherent plan; and

35 g. It is therefore appropriate and in the best interests of the State
36 to create a Dismal Swamp Preservation Commission to provide
37 comprehensive regulatory authority and regional planning for the
38 area with a primary focus on protecting and preserving the
39 ecological, historical, and recreational values of the area.

40

41 3. As used in this act:

42 “Application for development” means the application form and
43 all accompanying documents required by municipal ordinance for
44 approval of a subdivision plat, site plan, planned development,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted September 22, 2008.

1 conditional use, zoning variance or other permit as provided in the
2 “Municipal Land Use Law,” P.L.1975, c. 291 (C. 40:55D-1 et seq.).

3 “Commission” means the Dismal Swamp Preservation
4 Commission established pursuant to section 4 of this act.

5 “Dismal Swamp” means the area located within Edison
6 Township, Metuchen Borough, and South Plainfield Borough in
7 Middlesex County delineated by the United States Environmental
8 Protection Agency as a priority wetland and including a 1,000 foot
9 buffer adjacent to the designated wetland.

10 “Project” means any structure, land use change, or public
11 improvement for which a permit from, or determination by, the
12 municipality is required, which shall include, but not be limited to,
13 building permits, zoning variances, and excavation permits.

14

15 4. a. There is hereby established the Dismal Swamp
16 Preservation Commission which shall consist of seven members
17 appointed by the Governor, with the advice and consent of the
18 Senate, appointed and qualified as follows, provided however, that
19 no more than four of whom shall be of the same political party, and
20 no more than two members shall be appointed from any one
21 municipality:

22 (1) a resident of Edison Township, recommended to the
23 Governor for appointment by the governing body of the
24 municipality;

25 (2) a resident of Metuchen Borough, recommended to the
26 Governor for appointment by the governing body of the
27 municipality;

28 (3) a resident of South Plainfield Borough, recommended to the
29 Governor for appointment by the governing body of the
30 municipality;

31 (4) an elected official in Middlesex County;

32 (5) a representative of the Edison Wetlands Association; and

33 (6) two residents of the State with expertise in land use planning
34 and natural resources protection.

35 b. Each member appointed by the Governor shall serve for a
36 term of five years; provided that of the first members appointed by
37 the Governor, one shall serve for a term of two years, two for a term
38 of three years, two for a term of four years, and two for a term of
39 five years. Each member shall serve for the term of the
40 appointment and until a successor shall have been appointed and
41 qualified. Any vacancy shall be filled in the same manner as the
42 original appointment for the unexpired term only.

43 c. Any member of the commission may be removed by the
44 Governor for cause after a public hearing.

45 d. Each member of the commission shall take and subscribe to
46 an oath to perform the duties of the office faithfully, impartially,
47 and justly to the best of their ability. A record of such oaths shall
48 be filed in the office of the Secretary of State.

1 e. The members of the commission shall serve without
2 compensation, but the commission may reimburse its members for
3 necessary expenses incurred in the discharge of their duties.

4 f. The Governor shall designate one of the members of the
5 commission as chairperson. The commission shall select from its
6 members a vice-chairperson, and shall employ an executive
7 director, who shall also serve as secretary, and a treasurer. The
8 commission may also appoint, retain and employ, without regard to
9 the provisions of Title 11A, Civil Service, of the New Jersey
10 Statutes, such officers, agents, employees and experts as it may
11 require, and it shall determine their qualifications, terms of office,
12 duties, services and compensation.

13 g. The powers of the commission shall be vested in the members
14 thereof in office from time to time, and a majority of the total
15 authorized membership of the commission shall constitute a quorum
16 at any meeting thereof. Action may be taken and motions and
17 resolutions adopted by the commission at any meeting thereof by
18 the affirmative vote of a majority of the total authorized
19 membership; provided, however, that the commission may
20 designate one or more of its agents or employees to exercise such
21 administrative functions, powers, and duties, as it may deem proper,
22 under its supervision and control. No vacancy in the membership of
23 the commission shall impair the right of a quorum to exercise all the
24 rights and perform all the duties of the commission.

25 h. No member, officer, employee, or agent of the commission
26 shall be financially interested, either directly or indirectly, in any
27 project, any part of a project area, or an application for
28 development, other than a residence, or in any contract, sale,
29 purchase, lease, or transfer of real or personal property located
30 within the boundaries of the Dismal Swamp.

31 (1) Any contract or agreement knowingly made in contravention
32 of this section is voidable.

33 (2) Any person who willfully violates the provisions of this
34 section shall forfeit office or employment and shall be guilty of a
35 crime of the fourth degree.

36
37 5. a. Notwithstanding any provision of the "Municipal Land
38 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), to the contrary,
39 the commission shall review and approve, reject or modify all
40 applications for development within the Dismal Swamp pursuant to
41 P.L.1975, c.291 (C.40:55D-1 et seq.). The commission shall
42 exercise any or all of the powers and duties of a municipal planning
43 board and any or all or the powers and duties of a county planning
44 board for the Dismal Swamp.

45 No application for development shall be required to be reviewed
46 and approved by both the commission and the planning board of a
47 constituent municipality.

1 b. The commission shall review and approve, reject, or modify
2 any State project planned within the Dismal Swamp, and submit its
3 decision to the Governor and the commissioner of the department
4 proposing the project.

5 c. The review of an application for development shall not be
6 contingent upon the adoption of the master plan pursuant to section
7 6 of this act; however, upon adoption of the master plan, any
8 application for development shall be reviewed to ensure that the
9 actions proposed in the application also conform to the master plan.

10 d. The commission shall coordinate and support activities by
11 citizens' groups to promote and preserve the Dismal Swamp, and
12 shall actively seek funds for the purchase and preservation of lands
13 within Dismal Swamp for recreation and conservation purposes.

14 e. In accordance with the provisions of section 4 of P.L.1975,
15 c.291 (C.40:55D-8), the commission may establish and charge
16 reasonable fees for the review of applications for development
17 submitted to the commission and for other services the commission
18 may provide. Fees collected pursuant to this subsection shall be
19 deposited into a separate account, and shall be dedicated for use by
20 the commission solely for the purposes of administering and
21 enforcing its responsibilities pursuant to this act.

22
23 6. a. The commission shall prepare, or cause to be prepared,
24 after holding one public hearing in each of the three municipalities
25 within Dismal Swamp, a master plan for the physical, economic and
26 social development of the Dismal Swamp with elements similar to
27 those provided for municipal master plans in section 19 of
28 P.L.1975, c.291 (C.40:55D-28), as the commission determines to be
29 appropriate for the preservation of the ecological and historical
30 nature of the Dismal Swamp. The master plan shall include a report
31 presenting the objectives, assumptions, standards and principles
32 which are embodied in the various interlocking portions of the
33 master plan. In preparing the master plan or any portion thereof or
34 amendment thereto the commission shall give due consideration to:
35 existing historical sites and potential restorations or compatible
36 development; the range of uses and potential uses of the area in the
37 developed communities through which it passes; designated areas to
38 be kept as undeveloped, limited-access areas restricted to passive
39 recreation; and any other issues the commission deems appropriate
40 for the protection and enhancement of the area. In preparing the
41 master plan or any portion thereof or amendment thereto, the
42 commission shall consider existing patterns of development and any
43 relevant master plan or other plan of development, and shall ensure
44 widespread citizen involvement and participation in the planning
45 process.

46 b. The commission shall act in support of local suggestions or
47 desires to complement the master plan. Consultation, planning, and
48 technical expertise shall be made available to local planning bodies

1 that wish to implement land-use policies to enhance the area. The
2 commission shall act on or refer complaints by citizens' groups or
3 private residents who discover hazardous situations, pollution, or
4 evidence of noncompliance with use regulations.

5
6 7. Notwithstanding any provision of P.L. '2008' , c. '78' (C.
7 '40:55D-136.1 et seq.') **'[(pending before the Legislature as**
8 **Senate Bill No.1919 of 2008 or Assembly Bill No.2867 of 2008)]'**
9 to the contrary, no approval, as defined therein, within the Dismal
10 Swamp shall be extended or tolled pursuant to the provisions of
11 P.L. '2008' , c. '78' (C. '40:55D-136.1 et seq.') **'[(pending before**
12 **the Legislature as Senate Bill No.1919 of 2008 or Assembly Bill**
13 **No.2867 of 2008)]'** .

14
15 8. There is appropriated from the General Fund to the
16 Department of Community Affairs the sum of \$95,000 for the
17 Dismal Swamp Preservation Commission.

18
19 9. This act shall take effect immediately, except that section 7 of
20 this act shall take effect on the effective date of P.L. '2008' , c. '78'
21 (C. '40:55D-136.1 et seq.') **'[(pending before the Legislature as**
22 **Senate Bill No.1919 of 2008 or Assembly Bill No.2867 of 2008)]'** .