

SENATE, No. 342

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Establishes Department of Economic Development and Regulatory Affairs; transfers certain functions, powers, duties, agencies, divisions, and other entities from other principal departments to Department of Economic Development and Regulatory Affairs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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2

1 AN ACT establishing the Department of Economic Development
2 and Regulatory Affairs as a principal department in the
3 Executive Branch of State government, transferring certain
4 functions, powers, duties, agencies, divisions, and other entities
5 from certain other principal departments to the Department of
6 Economic Development and Regulatory Affairs, supplementing
7 Title 13 of the Revised Statutes, and revising parts of the
8 statutory law.

9

10 **BE IT ENACTED** by the Senate and General Assembly of the State
11 of New Jersey:

12

13 1. (New section) The Legislature finds and declares that:

14 a. While some of the regulatory aspects of the Department of
15 Environmental Protection are necessary to the quality of life in this
16 State – the protection of clean water and clean air – the manner in
17 which the department enforces these regulations often serves to
18 inhibit economic growth, which also affects the quality of life, and
19 that it is imperative that the twin goals of responsible regulation and
20 economic growth should reside in the same department, in order to
21 strike a needed balance between them;

22 b. It is a widely-held belief that the current operations and
23 overbearing regulatory posture of the Department of Environmental
24 Protection are matched in opposition to, and are often countering
25 the work of the New Jersey Commerce Commission, the Office of
26 Economic Growth, as well as the smart growth and state planning
27 components of the Department of Community Affairs;

28 c. All State departments and agencies thereof should encourage
29 responsible economic development and a positive business climate,
30 rather than the unproductive and inefficient status quo, and by
31 merging the regulatory aspects of the Department of Environmental
32 Protection with the functions of the aforementioned governmental
33 entities, a more cooperative spirit can be achieved between these
34 agencies of the State government by requiring them to work along
35 side each other in the same department; and

36 d. As a combined, dual-purpose entity is needed to assume a
37 mentoring role to business, industry, and residents alike, as a
38 teacher assisting these constituencies in abiding by the rules instead
39 of a prosecutor awaiting the imposition of sanctions for the slightest
40 infraction, and in recognition of the reality that most individuals
41 and businesses make an honest effort to comply with the manifold
42 rules and regulations promulgated by the State that are oftentimes
43 confusing and contradictory, and that the failure to comply, even by
44 accident, subjects the violator to fines and penalties that are often

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.

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1 prohibitive and overly punitive, it is necessary to authorize the
2 establishment of a new, restructured State department to be named
3 the Department of Economic Development and Regulatory Affairs,
4 all as hereinafter provided.

5
6 2. (New section) a. The Department of Environmental
7 Protection heretofore established as a principal department in the
8 Executive Branch of the State Government is hereby restructured
9 and designated as the Department of Economic Development and
10 Regulatory Affairs, and the office of Commissioner of
11 Environmental Protection is hereby designated as the office of the
12 Commissioner of Economic Development and Regulatory Affairs.

13 b. Except as otherwise provided by this act, all the functions,
14 powers and duties of the existing Department of Environmental
15 Protection and the commissioner thereof are continued in the
16 Department of Economic Development and Regulatory Affairs as
17 hereby designated and in the office of the commissioner thereof.

18
19 3. (New section) a. Whenever, in any law, rule, regulation,
20 order, contract, document, judicial or administrative proceeding or
21 otherwise, reference is made to the Department of Environmental
22 Protection or the commissioner thereof, the same shall mean and
23 refer to the Department of Economic Development and Regulatory
24 Affairs or the Commissioner of Economic Development and
25 Regulatory Affairs.

26 b. Whenever the Commissioner of Environmental Protection,
27 or any employee of that department, is designated to sit on the
28 board or be a member of any council, division, commission, trust,
29 authority, or any other entity, the designation shall mean the
30 Commissioner of Economic Development and Regulatory Affairs.

31
32 4. (New section) The Division of Coastal Resources in the
33 Department of Environmental Protection, together with all of its
34 functions, powers, duties, subdivisions, and other entities, is
35 continued as the Division of Coastal Resources in the Department
36 of Economic Development and Regulatory Affairs. Whenever in
37 any law, rule, or regulation the term Division of Coastal Resources
38 in the Department of Environmental Protection is used, the term
39 shall mean the Division of Coastal Resources in the Department of
40 Economic Development and Regulatory Affairs. Whenever any law
41 grants the Department of Environmental Protection, or the
42 commissioner thereof, review, control, or power over or relating to
43 the division, that review, control, or power shall be exercised by the
44 Department of Economic Development and Regulatory Affairs, or
45 the commissioner thereof.

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1 5. (New section) The Tidelands Resource Council in the
2 Department of Environmental Protection, together with all of its
3 functions, powers, duties, subdivisions, and other entities, is
4 continued as the Tidelands Resource Council in the Department of
5 Economic Development and Regulatory Affairs. This act shall not
6 affect the terms of office of the present members of the council. The
7 members of the council shall continue to be appointed as provided
8 by existing law. Whenever in any law, rule, or regulation the term
9 Tidelands Resource Council in the Department of Environmental
10 Protection is used, the term shall mean the Tidelands Resource
11 Council in the Department of Economic Development and
12 Regulatory Affairs. Whenever any law grants the Department of
13 Environmental Protection, or the commissioner thereof, review,
14 control, or power over or relating to the council, that review,
15 control, or power shall be exercised by the Department of Economic
16 Development and Regulatory Affairs, or the commissioner thereof.

17
18 6. (New section) The Division of Environmental Quality in the
19 Department of Environmental Protection, together with all of its
20 functions, powers, duties, subdivisions, and other entities, is
21 continued as the Division of Environmental Quality in the
22 Department of Economic Development and Regulatory Affairs.
23 Whenever in any law, rule, or regulation the term Division of
24 Environmental Quality in the Department of Environmental
25 Protection is used, the term shall mean the Division of
26 Environmental Quality in the Department of Economic
27 Development and Regulatory Affairs. Whenever any law grants the
28 Department of Environmental Protection, or the commissioner
29 thereof, review, control, or power over or relating to the division,
30 that review, control, or power shall be exercised by the Department
31 of Economic Development and Regulatory Affairs, or the
32 commissioner thereof.

33
34 7. (New section) The New Jersey Council on Environmental
35 Quality in the Department of Environmental Protection, together
36 with all of its functions, powers, duties, subdivisions, and other
37 entities, is continued as the New Jersey Council on Environmental
38 Quality in the Department of Economic Development and
39 Regulatory Affairs. This act shall not affect the terms of office of
40 the present members of the council. The members of the council
41 shall continue to be appointed as provided by existing law.
42 Whenever in any law, rule, or regulation the term New Jersey
43 Council on Environmental Quality in the Department of
44 Environmental Protection is used, the term shall mean the New
45 Jersey Council on Environmental Quality in the Department of
46 Economic Development and Regulatory Affairs. Whenever any law
47 grants the Department of Environmental Protection, or the

1 commissioner thereof, review, control, or power over or relating to
2 the council, that review, control, or power shall be exercised by the
3 Department of Economic Development and Regulatory Affairs, or
4 the commissioner thereof.

5
6 8. (New section) The Advisory Council on Solid Waste
7 Management in the Department of Environmental Protection,
8 together with all of its functions, powers, duties, subdivisions, and
9 other entities, is continued as the Advisory Council on Solid Waste
10 Management in the Department of Economic Development and
11 Regulatory Affairs. This act shall not affect the terms of office of
12 the present members of the council. The members of the council
13 shall continue to be appointed as provided by existing law.
14 Whenever in any law, rule, or regulation the term Advisory Council
15 on Solid Waste Management in the Department of Environmental
16 Protection is used, the term shall mean the Advisory Council on
17 Solid Waste Management in the Department of Economic
18 Development and Regulatory Affairs. Whenever any law grants the
19 Department of Environmental Protection, or the commissioner
20 thereof, review, control, or power over or relating to the council,
21 that review, control, or power shall be exercised by the Department
22 of Economic Development and Regulatory Affairs, or the
23 commissioner thereof.

24
25 9. (New section) The Hazardous Waste Facilities Siting
26 Commission in the Department of Environmental Protection,
27 together with all of its functions, powers, duties, subdivisions, and
28 other entities, is continued as the Hazardous Waste Facilities Siting
29 Commission in the Department of Economic Development and
30 Regulatory Affairs. This act shall not affect the terms of office of
31 the present members of the commission. The members of the
32 commission shall continue to be appointed as provided by existing
33 law. Whenever in any law, rule, or regulation the term Hazardous
34 Waste Facilities Siting Commission in the Department of
35 Environmental Protection is used, the term shall mean the
36 Hazardous Waste Facilities Siting Commission in the Department
37 of Economic Development and Regulatory Affairs. Whenever any
38 law grants the Department of Environmental Protection, or the
39 commissioner thereof, review, control, or power over or relating to
40 the commission, that review, control, or power shall be exercised by
41 the Department of Economic Development and Regulatory Affairs,
42 or the commissioner thereof.

43
44 10. (New section) The New Jersey Office of Recycling in the
45 Department of Environmental Protection, together with all of its
46 functions, powers, duties, subdivisions, and other entities, is
47 continued as the New Jersey Office of Recycling in the Department

1 of Economic Development and Regulatory Affairs. Whenever in
2 any law, rule, or regulation the term New Jersey Office of
3 Recycling in the Department of Environmental Protection is used,
4 the term shall mean the New Jersey Office of Recycling in the
5 Department of Economic Development and Regulatory Affairs.
6 Whenever any law grants the Department of Environmental
7 Protection, or the commissioner thereof, review, control, or power
8 over or relating to the New Jersey Office of Recycling, that review,
9 control, or power shall be exercised by the Department of Economic
10 Development and Regulatory Affairs, or the commissioner thereof.

11

12 11. (New section) The Division of Smart Growth in the
13 Department of Environmental Protection, together with all of its
14 functions, powers, duties, subdivisions, and other entities, is
15 continued as the Division of Smart Growth in the Department of
16 Economic Development and Regulatory Affairs. Whenever in any
17 law, rule, or regulation the term Division of Smart Growth in the
18 Department of Environmental Protection is used, the term shall
19 mean the Division of Smart Growth in the Department of Economic
20 Development and Regulatory Affairs. Whenever any law grants the
21 Department of Environmental Protection, or the commissioner
22 thereof, review, control, or power over or relating to the division,
23 that review, control, or power shall be exercised by the Department
24 of Economic Development and Regulatory Affairs, or the
25 commissioner thereof.

26

27 12. (New section) a. All the functions, powers, and duties of the
28 Smart Growth Ombudsman in the Department of Community
29 Affairs, established pursuant to section 2 of P.L.2004, c.89
30 (C.52:27D-10.3), are transferred to the Department of Economic
31 Development and Regulatory Affairs.

32 b. All appropriations and other moneys available and to
33 become available to the Smart Growth Ombudsman are hereby
34 continued in the Department of Economic Development and
35 Regulatory Affairs and shall be available for the objects and
36 purposes for which such moneys are appropriated subject to any
37 terms, restrictions, limitations, or other requirements imposed by
38 State or federal law.

39 c. Whenever, in any law, rule, regulation, order, contract,
40 document, judicial or administrative proceeding or otherwise,
41 reference is made to the Smart Growth Ombudsman in the
42 Department of Community Affairs, the same shall mean and refer to
43 the Smart Growth Ombudsman in the Department of Economic
44 Development and Regulatory Affairs.

45

46 13. (New section) a. All the functions, powers, and duties of the
47 Division of Smart Growth in the Department of Community Affairs,

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1 established pursuant to section 9 of P.L.2004, c.89 (C.52:27D-10.6),
2 are transferred to the Department of Economic Development and
3 Regulatory Affairs.

4 b. All appropriations and other moneys available and to
5 become available to the Division of Smart Growth are hereby
6 continued in the Department of Economic Development and
7 Regulatory Affairs and shall be available for the objects and
8 purposes for which such moneys are appropriated subject to any
9 terms, restrictions, limitations, or other requirements imposed by
10 State or federal law.

11 c. Whenever, in any law, rule, regulation, order, contract,
12 document, judicial or administrative proceeding or otherwise,
13 reference is made to the Division of Smart Growth in the
14 Department of Community Affairs, the same shall mean and refer to
15 the Division of Smart Growth in the Department of Economic
16 Development and Regulatory Affairs.

17

18 14. (New section) a. All the functions, powers, and duties of the
19 Division of Travel and Tourism in the Department of State,
20 established pursuant to section 4 of P.L.1977, c.225 (C.34:1A-48),
21 are transferred to the Department of Economic Development and
22 Regulatory Affairs.

23 b. All appropriations and other moneys available and to
24 become available to the Division of Travel and Tourism are hereby
25 continued in the Department of Economic Development and
26 Regulatory Affairs and shall be available for the objects and
27 purposes for which such moneys are appropriated subject to any
28 terms, restrictions, limitations, or other requirements imposed by
29 State or federal law.

30 c. Whenever, in any law, rule, regulation, order, contract,
31 document, judicial or administrative proceeding or otherwise,
32 reference is made to the Division of Travel and Tourism in the
33 Department of State, the same shall mean and refer to the Division
34 of Travel and Tourism in the Department of Economic
35 Development and Regulatory Affairs.

36

37 15. (New section) a. The New Jersey Commerce Commission
38 created by P.L.1998, c.44 (C.52:27C-61 et seq.) is abolished as a
39 commission in the Executive Branch of State government, and all of
40 its functions, powers and duties, except as otherwise provided in
41 this act, are hereby terminated.

42 b. The office and term of the New Jersey Commerce
43 Commission and of the consultants, employees, assistants, deputies,
44 and directors of the various divisions and departments of the New
45 Jersey Commerce Commission, and of the Board of Directors,
46 except as otherwise provided in this act, are hereby terminated.

47 c. This act shall not affect the orders, rules and regulations
48 heretofore made or promulgated by the New Jersey Commerce

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1 Commission, but such orders, rules and regulations shall continue
2 with full force and effect until amended or repealed by the
3 appropriate State office or officer.

4 d. This act shall not affect the tenure, compensation, and
5 pension rights, if any, of the holder of a position not specifically
6 abolished herein in office upon the effective date of this act, nor
7 alter the term of a member of a board, commission, or public body,
8 not specifically abolished herein, in office on the effective date of
9 this act, or require the reappointment thereof. Nothing in this act
10 shall be construed to deprive any person of any right or protection
11 provided to the person by Title 11A of the New Jersey Statutes,
12 Civil Service, or under any pension law or retirement system.

13 e. Acts and parts of acts inconsistent with any of the provisions
14 of this act are, to the extent of such inconsistency, superseded and
15 repealed.

16 f. This act shall be subject to the provisions of the "State
17 Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

18 g. Whenever, in any law, rule, regulation, order, contract,
19 document, judicial or administrative proceeding or otherwise,
20 reference is made to the New Jersey Commerce Commission, the
21 same shall mean and refer to the department, office or commission
22 to which the relevant function, power or duty referred to in the law,
23 rule, regulation, order, contract, document, judicial or
24 administrative proceeding has been transferred pursuant to this act.

25 h. This act shall not affect actions or proceedings, civil or
26 criminal, brought by or against any office or officer, the functions,
27 powers, and duties of which have been herein transferred from the
28 New Jersey Commerce Commission, and pending on the effective
29 date of this act, and such actions or proceedings may be prosecuted
30 or defended in the same manner and to the same effect by the
31 department, officer, or commission to which such transfer has been
32 made hereunder, as if the provisions of this section had not taken
33 effect.

34 i. All commissions, offices, departments, divisions, or boards
35 created by executive order and placed within the New Jersey
36 Commerce Commission or administered by the commission shall be
37 transferred to the Department of Economic Development and
38 Regulatory Affairs. The Governor may make such allocation by
39 executive order as the Governor deems appropriate of the entities
40 named above.

41
42 16. (New section) a. All the functions, powers, and duties of the
43 New Jersey Commerce Commission, established pursuant to section
44 3 of P.L.1998, c.44 (C.52:27C-63), are transferred to the
45 Department of Economic Development and Regulatory Affairs.

46 b. All appropriations and other moneys available and to
47 become available to the New Jersey Commerce Commission are
48 hereby continued in the Department of Economic Development and

1 Regulatory Affairs and shall be available for the objects and
2 purposes for which such moneys are appropriated subject to any
3 terms, restrictions, limitations, or other requirements imposed by
4 State or federal law.

5 c. Whenever, in any law, rule, regulation, order, contract,
6 document, judicial or administrative proceeding or otherwise,
7 reference is made to the New Jersey Commerce Commission, the
8 same shall mean and refer to the New Jersey Commerce
9 Commission in the Department of Economic Development and
10 Regulatory Affairs.

11

12 17. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read
13 as follows:

14 12. The **【department】** Department of Economic Development
15 and Regulatory Affairs shall formulate comprehensive policies for
16 the **【conservation of the natural resources of the State, the】**
17 promotion of environmental protection and the prevention of
18 pollution of the environment of the State. The department shall in
19 addition to the powers and duties vested in it by this act or by any
20 other law have the power to:

21 a. Conduct and supervise research programs for the purpose of
22 determining the causes, effects and hazards to the environment and
23 its ecology;

24 b. Conduct and supervise Statewide programs of education,
25 including the preparation and distribution of information relating to
26 **【conservation,】** environmental protection and ecology;

27 c. Require the registration of persons engaged in operations
28 which may result in pollution of the environment and the filing of
29 reports by them containing such information as the department may
30 prescribe to be filed relative to pollution of the environment, all in
31 accordance with applicable codes, rules or regulations established
32 by the department;

33 d. Enter and inspect any property, facility, building, premises,
34 site or place for the purpose of investigating an actual or suspected
35 source of pollution of the environment and conducting inspections,
36 collecting samples, copying or photocopying documents or records,
37 and for otherwise ascertaining compliance or noncompliance with
38 any laws, permits, orders, codes, rules and regulations of the
39 department. Any information relating to secret processes concerning
40 methods of manufacture or production, obtained in the course of
41 such inspection, investigation or determination, shall be kept
42 confidential, except this information shall be available to the
43 department for use, when relevant, in any administrative or judicial
44 proceedings undertaken to administer, implement, and enforce State
45 environmental law, but shall remain subject only to those
46 confidentiality protections otherwise afforded by federal law and by
47 the specific State environmental laws and regulations that the

1 department is administering, implementing and enforcing in that
2 particular case or instance. In addition, this information shall be
3 available upon request to the United States Government for use in
4 administering, implementing, and enforcing federal environmental
5 law, but shall remain subject to the confidentiality protection
6 afforded by federal law. If samples are taken for analysis, a
7 duplicate of the analytical report shall be furnished promptly to the
8 person suspected of causing pollution of the environment;

9 e. Receive or initiate complaints of pollution of the
10 environment, including thermal pollution, hold hearings in
11 connection therewith and institute legal proceedings for the
12 prevention of pollution of the environment and abatement of
13 nuisances in connection therewith and shall have the authority to
14 seek and obtain injunctive relief and the recovery of fines and
15 penalties in a court of competent jurisdiction;

16 f. Prepare, administer and supervise Statewide, regional and
17 local programs of **conservation and** environmental protection,
18 giving due regard for the ecology of the varied areas of the State
19 and the relationship thereof to the environment, and in connection
20 therewith prepare and make available to appropriate agencies in the
21 State technical information concerning **conservation and**
22 environmental protection, cooperate with the Commissioner of
23 Health and Senior Services in the preparation and distribution of
24 environmental protection and health bulletins for the purpose of
25 educating the public, and cooperate with the Commissioner of
26 Health and Senior Services in the preparation of a program of
27 environmental protection;

28 g. Encourage, direct and aid in coordinating State, regional and
29 local plans and programs concerning **conservation and**
30 environmental protection in accordance with a unified Statewide
31 plan which shall be formulated, approved and supervised by the
32 department. In reviewing such plans and programs and in
33 determining conditions under which such plans may be approved,
34 the department shall give due consideration to the development of a
35 comprehensive ecological and environmental plan in order to be
36 assured insofar as is practicable that all proposed plans and
37 programs shall conform to reasonably contemplated **conservation**
38 **and** environmental protection plans for the State and the varied
39 areas thereof;

40 h. Administer or supervise programs of **conservation and**
41 environmental protection, prescribe the minimum qualifications of
42 all persons engaged in official environmental protection work, and
43 encourage and aid in coordinating local environmental protection
44 services;

45 i. Establish and maintain adequate bacteriological, radiological
46 and chemical laboratories with such expert assistance and such
47 facilities as are necessary for routine examinations and analyses,

- 1 and for original investigations and research in matters affecting the
2 environment and ecology;
- 3 j. Administer or supervise a program of industrial planning for
4 environmental protection; encourage industrial plants in the State to
5 undertake environmental and ecological engineering programs; and
6 cooperate with the State Departments of Health and Senior
7 Services, and Labor and Workforce Development, and the New
8 Jersey Commerce Commission in formulating rules and regulations
9 concerning industrial sanitary conditions;
- 10 k. Supervise sanitary engineering facilities and projects within
11 the State, authority for which is now or may hereafter be vested by
12 law in the department, and shall, in the exercise of such supervision,
13 make and enforce rules and regulations concerning plans and
14 specifications, or either, for the construction, improvement,
15 alteration or operation of all public water supplies, all public
16 bathing places, landfill operations and of sewerage systems and
17 disposal plants for treatment of sewage, wastes and other
18 deleterious matter, liquid, solid or gaseous, require all such plans or
19 specifications, or either, to be first approved by it before any work
20 thereunder shall be commenced, inspect all such projects during the
21 progress thereof and enforce compliance with such approved plans
22 and specifications;
- 23 l. Undertake programs of research and development for the
24 purpose of determining the most efficient, sanitary and Economic
25 Developmental ways of collecting, disposing, recycling or utilizing
26 of solid waste;
- 27 m. Construct and operate, on an experimental basis, incinerators
28 or other facilities for the disposal of solid waste, provide the various
29 municipalities and counties of this State, and the Division of Local
30 Government Services in the Department of Community Affairs with
31 statistical data on costs and methods of solid waste collection,
32 disposal and utilization;
- 33 n. Enforce the State air pollution, water pollution,
34 [conservation,] environmental protection, solid and hazardous
35 waste management laws, rules and regulations, including the
36 making and signing of a complaint and summons for their violation
37 by serving the summons upon the violator and thereafter filing the
38 complaint promptly with a court having jurisdiction;
- 39 o. Acquire by purchase, grant, contract or condemnation, title
40 to real property, for the purpose of demonstrating new methods and
41 techniques for the collection or disposal of solid waste;
- 42 p. Purchase, operate and maintain, pursuant to the provisions of
43 this act, any facility, site, laboratory, equipment or machinery
44 necessary to the performance of its duties pursuant to this act;
- 45 q. Contract with any other public agency or corporation
46 incorporated under the laws of this or any other state for the
47 performance of any function under this act;

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- 1 r. With the approval of the Governor, cooperate with, apply
2 for, receive and expend funds from, the federal government, the
3 State Government, or any county or municipal government or from
4 any public or private sources for any of the objects of this act;
- 5 s. Make annual and such other reports as it may deem proper to
6 the Governor and the Legislature, evaluating the demonstrations
7 conducted during each calendar year;
- 8 t. Keep complete and accurate minutes of all hearings held
9 before the commissioner or any member of the department pursuant
10 to the provisions of this act. All such minutes shall be retained in a
11 permanent record, and shall be available for public inspection at all
12 times during the office hours of the department;
- 13 u. Require any person subject to a lawful order of the
14 department, which provides for a period of time during which such
15 person subject to the order is permitted to correct a violation, to
16 post a performance bond or other security with the department in
17 such form and amount as shall be determined by the department.
18 Such bond need not be for the full amount of the estimated cost to
19 correct the violation but may be in such amount as will tend to
20 insure good faith compliance with said order. The department shall
21 not require such a bond or security from any public body, agency or
22 authority. In the event of a failure to meet the schedule prescribed
23 by the department, the sum named in the bond or other security
24 shall be forfeited unless the department shall find that the failure is
25 excusable in whole or in part for good cause shown, in which case
26 the department shall determine what amount of said bond or
27 security, if any, is a reasonable forfeiture under the circumstances.
28 Any amount so forfeited shall be utilized by the department for the
29 correction of the violation or violations, or for any other action
30 required to insure compliance with the order;
- 31 v. Encourage and aid in coordinating State, regional and local
32 plans, efforts and programs concerning the remediation and reuse of
33 former industrial or commercial properties that are currently
34 underutilized or abandoned and at which there has been, or is
35 perceived to have been, a discharge, or threat of a discharge, of a
36 contaminant. For the purposes of this subsection, "underutilized
37 property" shall not include properties undergoing a reasonably
38 timely remediation or redevelopment process; and
- 39 w. Conduct research and implement plans and programs to
40 promote ecosystem-based management.
41 (cf: P.L.2007, c.288, s.6)

42
43 18. Section 1 of P.L.1991, c.421 (C.13:1D-101) is amended to
44 read as follows:

- 45 1. **【Within 180 days of the effective date of this act, the】** The
46 Department of 【Environmental Protection】 Economic Development
47 and Regulatory Affairs shall provide each applicant, or prospective

1 applicant, for a permit to engage in a regulated activity, with a
2 checklist of all submissions required to be made as part of a filing
3 of a permit application with the department.

4 A checklist shall be prepared by the department, after
5 consultations with interested parties for each permit subject to the
6 provisions of this act, or the department may consolidate the
7 requirements for two or more related approvals into a single
8 checklist. A checklist shall, with particularity, identify: the
9 application form or forms required by the department for a
10 completed application; any documents or other written submissions
11 required to be filed with the application; any filing, notice, hearing
12 or other requirement that is a precondition for review of an
13 application by the department, including any certification of
14 compliance therewith required by the department; and the technical
15 manual for the permit prepared by the department pursuant to
16 P.L.1991, c.422 (C.13:1D-111 to 13:1D-113). Checklists shall not
17 be subject to the notice and publication requirements of the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.). Checklists shall be reviewed at least annually, and shall be
20 updated as often as necessary.

21 As used in this act:

22 "Permit" means any permit, registration or license issued by the
23 Department of **Environmental Protection** Economic Development
24 and Regulatory Affairs establishing the regulatory and management
25 requirements for an ongoing regulated activity as authorized by
26 federal law or the following State enactments: R.S.12:5-1 et seq.;
27 P.L.1975, c.232 (C.13:1D-29 et seq.); the "Solid Waste
28 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of
29 P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated
30 Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et
31 al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey
32 Statewide Mandatory Source Separation and Recycling Act,"
33 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act
34 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Environmental
35 Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.);
36 the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-
37 19 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-
38 1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987,
39 c.156 (C.13:9B-1 et seq.); the "Coastal Area Facility Review Act,"
40 P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act
41 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply
42 Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.); P.L.1947,
43 c.377 (C.58:4A-5 et seq.); the "Water Pollution Control Act,"
44 P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21
45 et seq.); the "Safe Drinking Water Act," P.L.1977, c.224
46 (C.58:12A-1 et seq.); the "Flood Hazard Area Control Act,"

1 P.L.1962, c.19 (C.58:16A-50 et seq.).
2 (cf: P.L.1991, c.421, s.1)

3
4 19. Section 1 of P.L.1993, c.361 (C.13:1D-120) is amended to
5 read as follows:

6 1. The Legislature finds and declares that:

7 a. It is within the public interest to promote economic growth,
8 to encourage and foster the development and establishment of new
9 industries and businesses, to champion and expedite the expansion,
10 modernization and diversification of existing businesses,
11 corporations and establishments, and to attract and facilitate the
12 siting and relocation of employers who will provide highly skilled
13 and high-paying employment opportunities for the citizens of this
14 State;

15 b. While the quality of New Jersey's environment is paramount
16 to the health and well-being of the residents of this State, it is
17 essential to counter forcefully those who preach the erroneous
18 dogma that our citizens must choose between the environment and
19 economic prosperity and growth;

20 c. The Department of **【Environmental Protection】** Economic
21 Development and Regulatory Affairs must play a central role in
22 educating the public that a clean environment and economic
23 prosperity and growth are not only compatible, but interdependent;

24 d. To dispel the illusion that those two worthy objectives are
25 inherently incompatible, the Department of **【Environmental**
26 **Protection】** Economic Development and Regulatory Affairs should
27 immediately revise its current policies and procedures for reviewing
28 permit applications, eliminating unduly long and burdensome
29 practices which hinder timely investment, severely inhibit the
30 availability of necessary capital, retard economic growth and
31 development, frustrate new business ventures, and obstruct the
32 creation of new employment opportunities for the citizens of this
33 State;

34 e. It is, therefore, altogether fitting and proper, and within the
35 public interest, to direct the Department of **【Environmental**
36 **Protection】** Economic Development and Regulatory Affairs to
37 adopt new policies and procedures which will facilitate and
38 expedite the review of permit applications and to that end to
39 institute a system by which permit application fees will be paid
40 incrementally based upon the department's completion of its duties
41 and responsibilities at specific stages of the application review
42 process.

43 (cf: P.L.1993, c.361, s.1)

44
45 20. Section 2 of P.L.1993, c.361 (C.13:1D-121) is amended to
46 read as follows:

47 2. As used in this act:

1 "Administrative review" means a review to determine whether
2 all of the information which is required for a permit application to
3 be deemed complete has been submitted to the department;

4 "Applicant" means the person in whose name a permit is to be
5 issued;

6 "Commissioner" means the Commissioner of **【Environmental**
7 **Protection】** Economic Development and Regulatory Affairs;

8 "Completed application" means the submission of all of the
9 information designated on the checklist adopted pursuant to section
10 1 of P.L.1991, c.421 (C.13:1D-101 et seq.), for the class or category
11 of permit for which an application is made;

12 "Department" means the Department of **【Environmental**
13 **Protection】** Economic Development and Regulatory Affairs;

14 "Fee" means any fee, assessment or other charge imposed by the
15 department pursuant to any law, rule or regulation for a permit;

16 "Member of a regulated profession or occupation" means any
17 person subject to regulation by licensure or certification by the
18 department pursuant to any law of this State; and

19 "Permit" means any permit, registration or license issued by the
20 Department of **【Environmental Protection】** Economic Development
21 and Regulatory Affairs establishing the regulatory and management
22 requirements for an ongoing regulated activity as authorized by
23 federal law or the following State laws: R.S.12:5-1 et seq.;
24 P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid Waste Management
25 Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975,
26 c.326 (C.13:1E-26); the "Comprehensive Regulated Medical Waste
27 Management Act," P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989,
28 c.151 (C.13:1E-99.21a et al.); the "New Jersey Statewide
29 Mandatory Source Separation and Recycling Act," P.L.1987, c.102
30 (C.13:1E-99.11 et al.); the "Pesticide Control Act of 1971,"
31 P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site Recovery
32 Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic Catastrophe
33 Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); "The
34 Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the
35 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
36 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185
37 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954),"
38 P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply
39 Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947,
40 c.377 (C.58:4A-5 et seq.); the "Water Pollution Control Act,"
41 P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21
42 et seq.); the "Safe Drinking Water Act," P.L.1977, c.224
43 (C.58:12A-1 et al.); the "Flood Hazard Area Control Act,"
44 P.L.1962, c.19 (C.58:16A-50 et seq.). "Permit" shall not include
45 the renewal or modification of a New Jersey Pollutant Discharge
46 Elimination System permit issued pursuant to the "Water Pollution

1 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).
2 (cf: P.L.1993, c.361, s.2)

3
4 21. Section 1 of P.L.1995, c.296 (C.13:1D-125) is amended to
5 read as follows:

6 1. The Legislature finds and declares that:

7 The Department of **【Environmental Protection】** Economic
8 Development and Regulatory Affairs has historically measured the
9 success of its enforcement programs based upon the magnitude of
10 penalties imposed, correlating higher penalties with greater success,
11 and that this paradigm is predicated upon the belief that the threat
12 or imposition of monetary sanctions is the sole economic incentive
13 inducing compliance and the dominant force driving corporate
14 compliance decisions and investments.

15 The economic dynamics of pollution control and waste
16 management have substantially changed since the inception of
17 environmental regulatory and enforcement programs; that
18 considerable market forces now exist which substantially influence
19 the economics of compliance; that the threat or imposition of
20 monetary sanctions is no longer the dominant force driving
21 corporate compliance decisions and investments; and that the
22 enforcement programs administered by the Department of
23 **【Environmental Protection】** Economic Development and
24 Regulatory Affairs should recognize these changes in the factors
25 which influence compliance.

26 There are equally effective alternative methods to promote
27 compliance with environmental laws, such as establishing grace
28 (compliance) periods, which are especially well-suited for minor
29 violations that have minimal, if any, effect upon public health,
30 safety or natural resources, and that the Department of
31 **【Environmental Protection】** Economic Development and
32 Regulatory Affairs affords grace (compliance) periods in certain
33 regulatory programs for minor violations of environmental laws, but
34 this policy is not consistently applied throughout all regulatory
35 programs.

36 Expanding the use of grace (compliance) periods will promote
37 compliance by allowing those members of the regulated community
38 who are committed to working diligently and cooperatively toward
39 compliance, to invest private capital in pollution control equipment
40 and other measures which will yield long-term environmental
41 benefits, instead of in costly litigation and the payment of punitive
42 monetary sanctions.

43 Establishing a policy for the consistent application of grace
44 (compliance) periods for minor violations is a proper exercise of the
45 Department of **【Environmental Protection's】** Economic
46 Development and Regulatory Affairs' enforcement discretion and
47 will enable the Department of **【Environmental Protection】**

1 Economic Development and Regulatory Affairs to more sharply
2 focus limited public resources on serious violations of
3 environmental law.

4 Establishing and employing grace (compliance) periods for
5 minor violations will ensure the administration of an effective,
6 consistent, sensible and fair enforcement program by the
7 Department of **【Environmental Protection】** Economic Development
8 and Regulatory Affairs, and promote the health and safety of the
9 public and the protection of natural resources.

10 Persons responsible for minor violations of environmental laws
11 should be afforded a grace (compliance) period, and if the person
12 responsible for the violation achieves compliance within the grace
13 period, the Department of **【Environmental Protection】** Economic
14 Development and Regulatory Affairs should refrain from imposing
15 penalties.

16 The economic dynamics of compliance, in combination with an
17 evolving environmentally-sensitive corporate ethic, have resulted in
18 the initiation of environmental audits by regulated entities and the
19 consequent discovery of violations of environmental laws.

20 Environmental enforcement policies should promote and
21 encourage the initiation of environmental audits, the diligent
22 remediation of violations so discovered and the immediate and
23 voluntary disclosure of such violations to the Department of
24 **【Environmental Protection】** Economic Development and
25 Regulatory Affairs.

26 The Department of **【Environmental Protection】** Economic
27 Development and Regulatory Affairs should refrain from imposing
28 monetary sanctions for violations immediately and voluntarily
29 disclosed, provided certain conditions are met.
30 (cf: P.L.1995, c.296, s.1)

31

32 22. Section 2 of P.L.1995, c.296 (C.13:1D-126) is amended to
33 read as follows:

34 2. As used in this act:

35 "Department" means the Department of **【Environmental**
36 **Protection】** Economic Development and Regulatory Affairs.

37 "Environmental law" means the "Water Pollution Control Act,"
38 P.L.1977, c.74 (C.58:10A-1 et seq.); the "Air Pollution Control Act
39 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Solid Waste
40 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); the
41 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.);
42 the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-
43 19 et seq.); the "Worker and Community Right To Know Act,"
44 P.L.1983, c.315 (C.34:5A-1 et al.); the "Comprehensive Regulated
45 Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et
46 seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the "Pollution
47 Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); the "Spill

1 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et
2 seq.); the "Noise Control Act of 1971," P.L.1971, c.418 (C.13:1G-1
3 et seq.); the "Pesticide Control Act of 1971," P.L.1971, c.176
4 (C.13:1F-1 et seq.); the "Radiation Protection Act," P.L.1958, c.116
5 (C.26:2D-1 et seq.); the "Coastal Area Facility Review Act,"
6 P.L.1973, c.185 (C.13:19-1 et seq.); the "Freshwater Wetlands
7 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); "The
8 Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
9 R.S.12:5-1 et seq.; the "Flood Hazard Area Control Act," P.L.1962,
10 c.19 (C.58:16A-50 et seq.); any rule or regulation promulgated
11 thereunder; and any permit issued pursuant thereto. It shall also
12 include any ordinance adopted by a local government agency to
13 implement or effectuate the purposes or objectives of an
14 environmental law.

15 "Facility" means the building, equipment and contiguous area at
16 a single location used for the conduct of business, and which is
17 regulated pursuant to an environmental law.

18 "Local government agency" means a political subdivision of the
19 State or any instrumentality thereof, including, but not limited to, a
20 municipality, county, local board of health, county board of health,
21 regional health commission, improvement authority, utility
22 authority or sewerage authority authorized by law to enforce an
23 environmental law or adopt ordinances implementing or
24 effectuating the purposes or objectives of an environmental law.

25 "Minor violation" means any violation which the department,
26 pursuant to section 5 of this act, has designated as a minor
27 violation.

28 "Penalty" means a civil penalty imposed or civil administrative
29 penalty assessed for a violation of any environmental law or any
30 rule or regulation adopted pursuant thereto or any permit issued
31 thereunder.

32 "Person" means any individual, corporation, company,
33 partnership, firm, association, political subdivision of this State or
34 any State or interstate agency.

35 (cf: P.L.1995, c.296, s.2)

36

37 23. Section 5 of P.L.2004, c.89 (C.13:1D-145) is amended to
38 read as follows:

39 5. a. There is established in the Department of **【Environmental**
40 **Protection】** Economic Development and Regulatory Affairs a
41 Division of Smart Growth under the direction of a director, who
42 shall be appointed by the Governor and report to the Commissioner
43 of **【Environmental Protection】** Economic Development and
44 Regulatory Affairs. The director shall review and take action on
45 permits for which the applicant has requested expedited review
46 pursuant to this section.

1 b. The director shall coordinate and expedite the review of
2 permits issued by the division with the Smart Growth Ombudsman
3 appointed pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3).

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

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

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

44 (ii) in the case of water allocation permits issued pursuant to the
45 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
46 seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from
47 an unconfined aquifer or surface water body and New Jersey

1 Pollutant Discharge Elimination System permits issued pursuant to
2 the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et
3 seq.) for a discharge of 1,000,000 gallons per day or greater, the
4 division shall notify an applicant if the permit application is
5 technically complete or issue a notice of deficiency within 60 days
6 after filing of the application. If an application is determined to be
7 technically complete, or if a notice of deficiency is not issued
8 within 60 days after filing of the application, the application shall
9 be deemed technically complete;

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

21 (d) if more than one notice of deficiency is issued by the
22 division, the applicant may request an expedited hearing in
23 accordance with section 14 of P.L.2004, c.89 (C.52:14F-17) to
24 determine whether the application is technically complete;

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

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

1 public comment period, or within 45 days if more than minimal
2 comments were received in the public comment period.

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

5 d. The direct and indirect costs of personnel, equipment,
6 operating expenses, and activities of the division shall be funded
7 solely through permit fees for expedited permits issued in the smart
8 growth areas pursuant to this section. The department shall, in
9 consultation with the ombudsman, establish permit fees necessary
10 for the department to administer and enforce the expedited permit
11 application review program established pursuant to this section.
12 The fee schedule established pursuant to this subsection shall
13 include the department's pro rata share of the budget of the Smart
14 Growth Ombudsman. Within 30 days after the date of enactment of
15 P.L.2004, c.89 (C.52:27D-10.2 et al.), the department, in
16 consultation with the ombudsman, shall publish a schedule of
17 permit fees in the New Jersey Register and may amend the fee
18 schedule as necessary. The fee schedule may provide for increased
19 fees for complex projects.

20 e. (1) The Director of the Division of Smart Growth shall, within
21 120 days after the date of enactment of P.L.2004, c.89 (C.52:27D-
22 10.2 et al.), develop a program for the qualification and registration
23 of professionals who shall certify that a permit application is
24 complete and that the statutory and regulatory requirements for the
25 permit have been met by the applicant. The requirements for
26 qualification and registration may include, but shall not be limited
27 to, professional licensure relevant to the subject matter of the
28 permit, a review of projects undertaken by the professional applying
29 for qualification and registration, and a review of the nature of the
30 professional's services provided on each project.

31 (2) The director shall include in the program for the
32 qualification and registration of professionals any standards or
33 requirements necessary for proper administration and enforcement
34 of the provisions of P.L.2004, c.89 (C.52:27D-10.2 et al.), and shall
35 provide for the suspension or revocation of the qualification and
36 registration of professionals as provided in this subsection.

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

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

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

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

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

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

23 h. Applications for an expedited permit application review
24 pursuant to subsection c. of this section shall not be accepted until
25 120 days following the date of enactment of P.L.2004, c.89
26 (C.52:27D-10.2 et al.). Applications pending on the date of
27 enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.) shall, upon
28 request of the applicant, be processed in the expedited permit
29 application review program when it becomes effective. A permit
30 application that is the subject of a request under this provision shall
31 be transferred to the Division of Smart Growth for processing in
32 accordance with P.L.2004, c.89 (C.52:27D-10.2 et al.).

33 (cf: P.L.2004, c.89, s.5)

34

35 24. Section 10 of P.L.2004, c.89 (C.13:1D-146) is amended to
36 read as follows:

37 10. a. In addition to the provisions of subsection c. of section 5,
38 subsection c. of section 7 and subsection c. of section 9 of
39 P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 and C.52:27D-10.6),
40 expedited permit mechanisms, such as a permits-by-rule, general
41 permits, and certification by professionals qualified and registered
42 in accordance with subsection e. of section 5, subsection e. of
43 section 7 or subsection e. of section 9 of P.L.2004, c.89 (C.13:1D-
44 145, C.27:1-2 or C.52:27D-10.6), as appropriate, shall be made
45 available in the smart growth areas as determined appropriate by the
46 Commissioner of **【Environmental Protection】** Economic
47 Development and Regulatory Affairs, the Commissioner of

1 Transportation, or the Commissioner of Community Affairs, as
2 appropriate, after consultation with the Smart Growth Ombudsman.

3 b. The following permits or approvals in smart growth areas
4 shall be by permit-by-rule upon certification of compliance with
5 statutory and regulatory requirements by a professional qualified
6 and registered in accordance with subsection e. of section 5 of
7 P.L.2004, c.89 (C.13:1D-145):

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

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

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

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

20 (5) the following general permits issued by the Department of
21 **【Environmental Protection】** Economic Development and
22 Regulatory Affairs for activities in the waterfront development area
23 designated pursuant to R.S.12:5-3 and in accordance with rules and
24 regulations in effect on June 14, 2004:

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

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

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

34 c. The Director of the Division of Smart Growth established in
35 the Department of **【Environmental Protection】** Economic
36 Development and Regulatory Affairs pursuant to subsection a. of
37 section 5 of P.L.2004, c.89 (C.13:1D-145) shall take action on the
38 following wetlands general permits issued by the Department of
39 **【Environmental Protection】** Economic Development and
40 Regulatory Affairs pursuant to the Freshwater Wetlands Protection
41 Act Rules adopted under the authority of the "Freshwater Wetlands
42 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.) and in effect
43 on June 14, 2004, provided the application includes an effective
44 letter of interpretation issued by the department pursuant to section
45 8 of P.L.1987, c.156 (C.13:9B-8), in smart growth areas within 45
46 days upon certification of compliance with statutory and regulatory
47 requirements by a professional qualified and registered in

1 accordance with subsection e. of section 5 of P.L.2004, c.89
2 (C.13:1D-145):

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

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

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

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

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

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

32 (7) regulated activities in freshwater wetlands or transition
33 areas, necessary for the construction of additions or appurtenant
34 improvements to residential dwellings lawfully existing prior to
35 July 1, 1988, provided that the improvements or additions require
36 less than a cumulative surface area of 750 square feet of fill or
37 disturbance and shall not result in new alterations to a freshwater
38 wetland outside of the 750 square foot area;

39 (8) regulated activities in freshwater wetlands, transition areas
40 and State open waters necessary for surveying and investigative
41 activities, including: soil borings dug by machine; hand dug soil
42 borings larger than three feet in diameter or depth; cutting of
43 vegetation by machine for a survey line; cutting of vegetation by
44 hand for a survey line; and digging of exploratory pits and other
45 temporary activities necessary for a geotechnical or archaeological
46 investigation; and

1 (9) regulated activities in freshwater wetlands and transition
2 areas necessary for the repair or modification of a malfunctioning
3 individual subsurface sewage disposal system provided that the
4 activity shall disturb no more than one-quarter acre of freshwater
5 wetlands or transition areas combined.

6 d. The Director of the Division of Smart Growth established in
7 the Department of **【Environmental Protection】** Economic
8 Development and Regulatory Affairs pursuant to subsection a. of
9 section 5 of P.L.2004, c.89 (C.13:1D-145) shall take action on
10 minor stream encroachment permits for an encroachment project
11 that does not require hydrologic or hydraulic review; does not
12 require review of any stormwater detention basin; does not increase
13 potential for erosion or sedimentation in stream and does not
14 require substantial channel modification or relocation; and does not
15 need to be reviewed for the zero percent or 20 percent net fill
16 limitations other than that associated with a single family dwelling,
17 in smart growth areas within 30 days upon certification of
18 compliance with statutory and regulatory requirements by a
19 professional qualified and registered in accordance with subsection
20 e. of section 5 of P.L.2004, c.89 (C.13:1D-145).

21 e. The following Highway Occupancy permits or approvals in
22 smart growth areas shall be by permit-by-rule upon certification of
23 compliance with statutory and regulatory requirements by a
24 professional qualified and registered in accordance with subsection
25 e. of section 7 of P.L.2004, c.89 (C.27:1E-2):

- 26 (1) drainage;
- 27 (2) utility openings; and
- 28 (3) utility poles (new and relocation).

29 f. Notwithstanding the provisions of P.L.1987, c.156
30 (C.13:9B-1 et seq.), or any rule or regulation adopted pursuant
31 thereto, to the contrary, an activity conducted under the authority of
32 a general permit issued by the Department of **【Environmental**
33 **Protection】** Economic Development and Regulatory Affairs
34 pursuant to section 23 of P.L.1987, c.156 (C.13:9B-23) may occur
35 in a vernal habitat located within a smart growth area or in a
36 transition area adjacent to a vernal habitat located within a smart
37 growth area.

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

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

46 (cf: P.L.2004, c.89, s.10)

1 25. Section 5 of P.L.1998, c.44 (C.52:27C-65) is amended to
2 read as follows:

3 5. All appropriations and other moneys available and to become
4 available to any department, division, bureau, board, commission,
5 or other entity or agency, the functions, powers and duties of which
6 have been assigned or transferred to the Department of Commerce
7 and Economic Development Development, are hereby continued in
8 the commission, except as herein otherwise provided, and shall be
9 available for the objects and purposes for which such moneys are
10 appropriated subject to any terms, restrictions, limitations, or other
11 requirements imposed by State or federal law. Nothing herein shall
12 alter the provisions of section 4 of P.L.1983, c.190 (C.34:1B-39).
13 Whenever, in any law, rule, regulation, order, contract, document,
14 judicial or administrative proceeding or otherwise, reference is
15 made to the Department of Commerce and Economic Development
16 Development, the New Jersey Commerce and Economic
17 Development Growth Commission or the New Jersey Commerce,
18 Economic Development Growth and Tourism Commission, the
19 same shall mean and refer to the "New Jersey Commerce
20 Commission" in **【but not of】** the Department of **【the Treasury】**
21 Economic Development and Regulatory Affairs.

22 (cf: P.L.2007, c.253, s.28)

23

24 26. Section 8 of P.L.1998, c.44 (C.52:27C-68) is amended to
25 read as follows:

26 8. The Board of Directors of the commission shall consist of
27 the following 11 voting members and two non-voting members:

28 a. The Governor, who shall be the Chair of the commission.
29 The Governor may be represented by an official designee, whose
30 name shall be filed with the commission.

31 b. The **【State Treasurer】** Commissioner of Economic
32 Development and Regulatory Affairs who shall serve ex-officio and
33 may be represented by an official designee, whose name shall be
34 filed with the commission.

35 c. One commissioner from each of the following departments
36 who shall serve ex-officio: **【the Department of Environmental**
37 **Protection,】** the Department of Labor and Workforce Development
38 and the Department of Transportation. These commissioners may
39 be represented by an official designee, whose name shall be filed
40 with the commission.

41 d. The chairman of the New Jersey Commission on Higher
42 Education, who shall serve ex officio. This chairman may be
43 represented by an official designee, whose name shall be filed with
44 the commission.

45 e. Three public members who shall be appointed by the
46 Governor with the advice and consent of the Senate, not more than
47 two of whom shall be of the same political party. The three public

1 members shall serve for a term of five years and shall serve until
2 their successors are appointed and qualified. Of the three public
3 members first appointed pursuant to this subsection, two shall serve
4 for a term of five years and one shall serve for a term of three years.
5 These members shall be New Jersey residents who shall provide
6 appropriate geographical representation from throughout the State
7 and who shall be employed by, owners of, or members of the board
8 of directors of, a business whose principal operation is located in
9 New Jersey. Public members shall receive no compensation for
10 their services but shall be entitled to reimbursement for expenses
11 incurred in the performance of their official duties.

12 f. Two additional members who shall be appointed by, and
13 serve at the pleasure of, the Governor. The Governor is authorized
14 to appoint one member upon the recommendation of the President
15 of the Senate and one member upon the recommendation of the
16 Speaker of the General Assembly.

17 g. One member of the Senate, to be appointed by the President
18 of the Senate, and one member of the General Assembly, to be
19 appointed by the Speaker of the General Assembly. These members
20 are non-voting, advisory members, appointed solely for the purpose
21 of developing and facilitating legislation to assist the commission in
22 fulfilling its statutory mission, and may not exercise any of the
23 executive powers delegated to the commission by law.

24 h. Any vacancies in the appointed membership of the
25 commission occurring other than by expiration of term shall be
26 filled in the same manner as the original appointment, but for the
27 unexpired term only.

28 (cf: P.L.2007, c.253, s.30)

29

30 27. Section 9 of P.L.2004, c.89 (C.52:27D-10.6) is amended to
31 read as follows:

32 9. a. There is established in the Department of **Community**
33 **Affairs**] Economic Development and Regulatory Affairs a Division
34 of Smart Growth under the direction of a director, who shall be
35 appointed by the Governor and report to the Commissioner of
36 **Community Affairs**] Economic Development and Regulatory
37 Affairs. The director shall review and take action on permits for
38 which the applicant has requested expedited review pursuant to this
39 section.

40 b. The director shall coordinate and expedite the review of
41 permits issued by the division with the Smart Growth Ombudsman
42 appointed pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3).

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

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

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

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

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

39 (d) if more than one notice of deficiency is issued by the
40 division, the applicant may request an expedited hearing in
41 accordance with section 14 of P.L.2004, c.89 (C.52:14F-17) to
42 determine whether the application is technically complete.

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

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

1 areas. The department shall, in consultation with the ombudsman,
2 establish permit fees necessary for the department to administer and
3 enforce the program. The fee schedule established pursuant to this
4 subsection shall include the department's pro rata share of the
5 budget of the Smart Growth Ombudsman. Within 30 days after the
6 date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), the
7 department, in consultation with the ombudsman, shall publish a
8 schedule of permit fees in the New Jersey Register and may amend
9 the fee schedule as necessary. The fee schedule may provide for
10 increased fees for complex projects.

11 e. (1) The Director of the Division of Smart Growth shall,
12 within 120 days after the date of enactment of P.L.2004, c.89
13 (C.52:27D-10.2 et al.), develop a program for the qualification and
14 registration of professionals who shall certify that a permit
15 application is complete and that the statutory and regulatory
16 requirements for the permit have been met by the applicant. The
17 requirements for qualification and registration may include, but
18 shall not be limited to, professional licensure relevant to the subject
19 matter of the permit, a review of projects undertaken by the
20 professional applying for qualification and registration, and a
21 review of the nature of the professional's services provided on each
22 project.

23 (2) The director shall include in the program for the
24 qualification and registration of professionals any standards or
25 requirements necessary for proper administration and enforcement
26 of the provisions of P.L.2004, c.89 (C.52:27D-10.2 et al.), and shall
27 provide for the suspension or revocation of the qualification and
28 registration of professionals as provided in this subsection.

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

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

43 (5) Prior to any suspension, revocation, or failure to renew a
44 person's qualification and registration, the department shall afford
45 the person or firm an opportunity for a hearing in accordance with
46 the provisions of the "Administrative Procedure Act," P.L.1968,
47 c.410 (C.52:14B-1 et seq.), except that, if the department has reason

1 to believe that a condition exists which poses an imminent threat to
2 the public health, safety or welfare, it may order the immediate
3 suspension of qualification and registration pending the outcome of
4 the hearing.

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

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

14 h. Applications for an expedited permit application review
15 pursuant to subsection c. of this section shall not be accepted until
16 120 days following the date of enactment of P.L.2004, c.89
17 (C.52:27D-10.2 et al.). Applications pending on the date of
18 enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.) shall, upon
19 request of the applicant, be processed in the expedited permit
20 application review program when it becomes effective. A permit
21 application that is the subject of a request under this provision shall
22 be transferred to the Division of Smart Growth for processing in
23 accordance with P.L.2004, c.89 (C.52:27D-10.2 et al.).
24 (cf: P.L.2004, c.89, s.9)

25

26 28. The following are repealed:
27 Section 11 of P.L.1987, c.365 (C.13:1E-96.1); and
28 Section 3 of P.L.1998, c.154 (C.52:27C-63).

29

30 29. This act shall take effect upon the enactment into law of
31 P.L. , c. (C.)(pending before the Legislature as Senate
32 Bill No. of 2008).

33

34

35

STATEMENT

36

37 This bill would, in effect, create a new department by
38 restructuring the existing Department of Environmental Protection,
39 which would be designated as the Department of Economic
40 Development and Regulatory Affairs. The bill would also transfer
41 certain functions, powers, duties, agencies, divisions, and other
42 entities from other principal departments to the reorganized and
43 renamed Department of Economic Development and Regulatory
44 Affairs.

45 The bill would transfer all the functions, powers, and duties of
46 the Smart Growth Ombudsman in the Department of Community
47 Affairs, established pursuant to section 2 of P.L.2004, c.89

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1 (C.52:27D-10.3), to the Department of Economic Development and
2 Regulatory Affairs.

3 The bill would transfer all the functions, powers, and duties of
4 the Division of Travel and Tourism in the Department of State,
5 established pursuant to section 4 of P.L.1977, c.225 (C.34:1A-48),
6 to the Department of Economic Development and Regulatory
7 Affairs.

8 The bill would also transfer all the functions, powers, and duties
9 of the Division of Smart Growth in the Department of Community
10 Affairs, established pursuant to section 9 of P.L.2004, c.89
11 (C.52:27D-10.6), to the Department of Economic Development and
12 Regulatory Affairs.

13 The bill would abolish the New Jersey Commerce Commission
14 created by P.L.1998, c.44 (C.52:27C-61 et seq.) as a commission in
15 the Executive Branch of State government, and all of its functions,
16 powers and duties, would be transferred to the Department of
17 Economic Development and Regulatory Affairs.