

SENATE, No. 80

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator MICHAEL J. DOHERTY

District 23 (Warren and Hunterdon)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S80 DOHERTY

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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42 2. This act shall take effect immediately.

STATEMENT

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

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