

ASSEMBLY, No. 166

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen GIBSON and ASSELTA

1 **AN ACT** concerning the review of certain developments in the coastal
2 area, supplementing P.L.1973, c.185 (C.13:19-1 et seq.), and
3 repealing section 22 of P.L.1979, c.111 (C.13:18A-23).

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

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8 1. The Commissioner of Environmental Protection, when applying
9 the criteria set forth in sections 10 and 11 of P.L.1973, c.185
10 (C.13:19-10 and C.13:19-11) for the issuance of a permit for a
11 development as required pursuant to section 5 of P.L.1973, c.185
12 (C.13:19-5), shall not refer to or base its decision on the provisions of
13 the comprehensive management plan for the pinelands adopted
14 pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8).

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16 2. The Commissioner of Environmental Protection, when adopting
17 regulations pursuant to section 17 of P.L.1973, c.185 (C.13:19-17),
18 shall not incorporate by reference any of the provisions of the
19 comprehensive management plan for the pinelands adopted pursuant
20 to section 7 of P.L.1979, c.111 (C.13:18A-8). Any such provision in
21 existing regulations is void.

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23 3. Section 22 of P.L.1979, c.111 (C.13:18A-23) is repealed.

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25 4. This act shall take effect immediately.

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STATEMENT

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29 This bill would provide that a Department of Environmental
30 Protection and Energy review of a permit pursuant to the "Coastal
31 Area Facility Review Act" (CAFRA), be based on the regulatory
32 standards of that act and without any reference to the comprehensive
33 management plan for the pinelands.

34 Part of the coastal area subject to CAFRA review is also in the

1 boundaries of the Pinelands National Reserve. When the "Pinelands
2 Protection Act" was adopted in 1979, it envisioned that a plan be
3 adopted by the Pinelands Commission for the pinelands area, a subset
4 of the Pinelands National Reserve. That plan would serve as a land
5 use plan in that limited area. For the remainder of the Pinelands
6 National Reserve that is outside the pinelands area, nearly all of which
7 is in the coastal area and thus subject to CAFRA, the act envisioned
8 that the department would regulate development in that area pursuant
9 to CAFRA. In fact, the "Pinelands Protection Act" required that the
10 CAFRA environmental design be changed if necessary to effectuate the
11 purposes of the "Pinelands Protection Act." In 1980 the CAFRA
12 regulations were reviewed and deemed to be consistent with the
13 pinelands comprehensive management plan.

14 Despite this legislative intent, the Pinelands Commission and the
15 department have devised a CAFRA review process whereby regulatory
16 control of permitting in the CAFRA/pinelands overlap area has been
17 ceded from the department to the Pinelands Commission through a
18 memorandum of agreement. Under this MOA, the Pinelands
19 Commission serves as a reviewer of the permit. This, together with
20 the fact that the CAFRA regulations attempts to incorporate the
21 pinelands comprehensive management plan by reference, has led to the
22 confusing and often frustrating situation where a person proposing to
23 construct a development in the overlap area is denied a permit because
24 of violations of the pinelands comprehensive management plan, even
25 though the permit is in conformity with all the regulations adopted
26 under CAFRA. Developers and others are uncertain in any given case
27 what regulations will be applied to them and what criteria they have to
28 meet.

29 This bill would resolve this confusing regulatory scheme by
30 clarifying that the CAFRA regulations, and not the pinelands
31 comprehensive management plan, govern development in the
32 CAFRA/pinelands overlap area. The bill provides further that the
33 department may not adopt the pinelands comprehensive plan merely by
34 reference to it. Rather, if the department believes that any or all the
35 provisions of the plan should be applied in the coastal area, the
36 department would be required to adopt explicitly those provisions so
37 that the public will be able to comment upon them and subsequently
38 be aware of the standards and requirements they must meet in order to
39 obtain a permit.

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44 Clarifies applicable standards and regulations for the area subject to
45 CAFRA review that is within the Pinelands National Reserve.