

SENATE CONCURRENT RESOLUTION No. 43

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator CIESLA

1 **A CONCURRENT RESOLUTION** concerning legislative review of Department
2 of Environmental Protection regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey.

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5 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
6 Assembly concurring):

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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Legislature may review any rule or regulation
10 adopted by an administrative agency to determine if the rule or regulation is
11 consistent with the intent of the Legislature as expressed in the language of the
12 statute which the rule or regulation is intended to implement.

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14 2. a. In 1978 Congress enacted section 502 of the National Parks and
15 Recreation Act of 1978 (16 U.S.C. §471i). The federal act designates
16 approximately one million acres as the Pinelands National Reserve. The New
17 Jersey "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) was
18 enacted to implement the federal act. However, the State act does not give
19 the Pinelands Commission, created by the Pinelands Protection Act,
20 regulatory authority over the entire Pinelands National Reserve, but rather
21 restricts its jurisdiction to the specifically designated pinelands area. As a
22 result, approximately 221,000 acres of the Pinelands National Reserve were
23 excluded by the State law from the pinelands area. Most of the land in the
24 Pinelands National Reserve but outside the pinelands area was intended to be
25 regulated by the Department of Environmental Protection (DEP) under the
26 statutory jurisdiction of the "Coastal Area Facility Review Act," P.L.1973,
27 c.185 (C.13:19-1 et seq.)(CAFRA).

28 b. When the Legislature enacted the Pinelands Protection Act it included
29 a provision specifically addressing the area of overlap between CAFRA and
30 the Pinelands National Reserve. Specifically, section 22 of P.L.1979, c.111
31 (C.13:18A-23) requires the DEP to review its implementation of CAFRA
32 within 18 months and make any necessary revisions to "effectuate the
33 purposes of" the State and federal pinelands protection acts. The department
34 undertook this review, made certain minor changes, and found that the
35 CAFRA program would adequately effectuate the purposes of the State and

1 federal pinelands protection acts.

2 c. In 1988, the DEP and the Pinelands Commission entered into a
3 Memorandum of Agreement (MOA) whereby applications in the area outside
4 the pinelands area but inside the CAFRA boundaries would be given to the
5 commission for review and comment. It was understood that the substantive
6 CAFRA regulations would continue to govern development decisions in this
7 area, as was the intent of the Legislature. Reference to this agreement was
8 subsequently incorporated into the CAFRA regulations at N.J.A.C.7:7E-3.44.
9 Despite the clear legislative intent to have CAFRA regulations govern
10 development decisions in this overlap area, the department, at times, has
11 decided to deny development applications that meet all the relevant CAFRA
12 regulations, but which do not meet certain provisions of the Pinelands
13 Comprehensive Management Plan (CMP). The use of the MOA process to
14 incorporate substantive provisions of the CMP into the CAFRA regulations
15 is in direct conflict with the express intent of the Legislature that once the initial
16 review of the CAFRA program was completed and changes made to the
17 regulations, the substantive CAFRA regulations, not the CMP, would govern
18 development decisions in the overlap area. Additionally, the use of the MOA
19 in this manner is not reflected in the CAFRA regulations, causes uncertainty
20 and conflicting decision making in contravention of legislative intent that
21 CAFRA regulations lead to more predictable and consistent decision making,
22 and has been held by an administrative law judge to violate due process
23 requirements.

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25 3. The Legislature finds that the manner in which the DEP implements the
26 provisions of N.J.A.C.7:7E-3.44, which provides that coastal development
27 decisions are to be "consistent with the intent, policies and objectives of the
28 National Parks and Recreation Act of 1978 . . . and the State Pinelands
29 Protection Act of 1979" and which provides that the "Department's Land Use
30 Regulation Program and the Pinelands Commission will coordinate the permit
31 review process through the procedure outlined in the February 8, 1988
32 Memorandum of Agreement," has the effect of (1) delegating regulatory power
33 over development decisions in the Pinelands National Reserve/CAFRA
34 overlap area from the DEP to the Pinelands Commission, and (2) changing the
35 substantive provisions for the review of development applications by applying
36 the provisions of the Pinelands Comprehensive Management Plan rather than
37 the substantive provisions of the CAFRA regulations. The Legislature
38 therefore finds that N.J.A.C.7:7E-3.44 is not consistent with the intent of the
39 Legislature as expressed in the language of the "Coastal Area Facility Review
40 Act," P.L.1973, c.185 (C.13:19-1 et seq.) and the "Pinelands Protection
41 Act," P.L.1979, c.111 (C.13:18A-1 et seq.), which the regulations are
42 intended to implement.

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