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# ***Committee Meeting***

of

## SENATE ENVIRONMENT COMMITTEE

### SENATE BILL No. 1

*(The "Highlands Water Protection and Planning Act")*

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**LOCATION:** Committee Room 16  
State House Annex  
Trenton, New Jersey

**DATE:** June 7, 2004  
12:00 p.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Bob Smith, Chair  
Senator Stephen M. Sweeney, Vice Chair  
Senator John H. Adler  
Senator Andrew R. Ciesla  
Senator Henry P. McNamara



**ALSO PRESENT:**

Judith L. Horowitz  
Algis P. Matioska  
*Office of Legislative Services*  
*Committee Aides*

Kevil Duhon  
*Senate Majority*  
*Committee Aide*

John Hutchison  
*Senate Republican*  
*Committee Aide*

*Meeting Recorded and Transcribed by*  
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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## TABLE OF CONTENTS

	<b><u>Page</u></b>
Senator Robert J. Martin District 26	5
lmb: 1-15	

**SENATOR BOB SMITH (Chair):** Welcome.

I hold in my hands the testimony from seven of the nine meetings that we've had on this very important bill. (indicating stack) And with a little luck, today will be the day.

When we met last, a series of amendments were described by the Committee aide. We're going to take those amendments first. I would point out to the members that they do include the protection of Saddle Mountain, which was taken care of by revision to the bill with regard to the mining definitions; and it will include today's date as the date by which you would had to have had a mining permit to do a quarry operation.

The amendments that were discussed, again, at the prior meeting had a conceptual discussion of a hold harmless amendment concerning open space, which was very important to Senator Sweeney, to make certain that all areas of the state were treated fairly. And that amendment is now in here and is fleshed out.

So let's start today's meeting by-- Do we need to do anything, in terms of taking a roll?

MS. HOROWITZ (Committee Aide): I can take roll.

SENATOR SMITH: All right. We'll take a roll -- that I believe will be uncontested. (laughter)

SENATOR SWEENEY: You never know. (laughter)

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Senator Sweeney.

SENATOR SWEENEY: Yes, here.

MS. HOROWITZ: Senator Adler was here, and he'll be back.  
Senator Ciesla.

SENATOR CIESLA: Here.

MS. HOROWITZ: Senator McNamara.

SENATOR McNAMARA: Here.

SENATOR SMITH: Okay. We are going to do two sets of amendments, the first being the prior amendments that we discussed at the last meeting.

Senator Sweeney, can I have a motion to amend the bill pursuant to the amendments provided at the last meeting, and the ones that were fleshed out as part of that discussion?

SENATOR SWEENEY: I will make a motion.

SENATOR SMITH: Can I have a second?

SENATOR CIESLA: Second.

SENATOR SMITH: Second it.

And can we take a vote on that set of amendments first?

MS. HOROWITZ: On the set of amendments that are dated 06/07/04 -- the big set of amendments.

Senator McNamara.

SENATOR McNAMARA: Yes.

MS. HOROWITZ: Senator Ciesla.

SENATOR CIESLA: Yes.

MS. HOROWITZ: Senator Adler left a yes vote.

Senator Sweeney.

SENATOR SWEENEY: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

The second set of amendments are amendments proposed by Senator Sweeney, which provide revisions to the TDR sections of the bill to address some of the concerns expressed by the League of Municipalities, and also a very minor boundary change in Mahwah.

Senator Sweeney, you wanted to move those amendments?

SENATOR SWEENEY: I make a motion to move the amendments.

SENATOR SMITH: Is there a second?

SENATOR CIESLA: Second.

SENATOR SMITH: Now would you take a vote on those amendments?

MS. HOROWITZ: On those amendments, to make boundary changes and other changes to the TDR sections.

Senator McNamara.

SENATOR McNAMARA: Yes.

MS. HOROWITZ: Senator Ciesla.

SENATOR CIESLA: Yes.

MS. HOROWITZ: Senator Adler left a yes vote.

Senator Sweeney.

SENATOR SWEENEY: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

And now a vote on the bill, as amended. Can I have a motion to release the amended bill?

SENATOR SWEENEY: I will make a motion.

SENATOR SMITH: Moved by Senator Sweeney.

And a second, please?

SENATOR McNAMARA: Can I make a comment -- a couple of comments before?

SENATOR SMITH: Well, I tell you what. How about if we have a comment period afterward? Would that be all right? And we'll all take a-- I'm sure everybody has a lot of things to say about the bill. But maybe we can get the business done.

SENATOR McNAMARA: I'll give it a second.

SENATOR SMITH: Thank you.

MS. HOROWITZ: On S-1, with both sets of amendments incorporated, including a change that's not reflected in the big amendments with regard to the mining exemption in Section 30.

Senator McNamara.

SENATOR McNAMARA: Yes.

MS. HOROWITZ: Senator Ciesla.

SENATOR CIESLA: Abstain.

MS. HOROWITZ: Senator Adler left a yes vote.

Senator Sweeney.

SENATOR SWEENEY: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

And this very important bill is released from this Committee, as amended. (applause)

I know that Senators want to make comments. I'm going to take the prerogative of the Chair -- I'm going to go my left to right. I'd like to thank our co-prime sponsor, Senator Bob Martin.

And Senator Martin, if you'd like to make a few comments, you're more than welcome.

**SENATOR ROBERT J. MARTIN:** I'm not sure this day would come. Of course, this bill isn't law yet, but having this Committee release this bill today is a testimony to the true prime sponsor, Senator Smith. This couldn't have happened without him. He was extraordinary in his persistence, diligence. I saw him at his points of optimism, points where I think he was more than a little bit frustrated. I think he did what I've only seen a handful of times, up to this point in time -- try to keep a bill together and keep it's integrity, but still recognize there were some legitimate changes that had to be made. Some of which he didn't agree with, but felt that they would still be able to move us so far forward with this piece of legislation.

There's not more-- I've said a lot before, so I won't continue to say it. But I think, for the folks in my district and in north Jersey who live in the Highlands area, this is a terrific achievement, and I can't wait for the actual passage of this bill and putting it into effect.

Thank you.

SENATOR SMITH: Thank you, Senator Martin.

Senator Sweeney.

SENATOR SWEENEY: Thank you, Senator Smith.

First, before I get into my prepared remarks, I also want to thank the commitment of Governor McGreevey to make this a priority. Because the drinking water for the residents of the state is an extremely important priority and has never wandered from any of us on this Committee. And to Senator Smith, for his patience and willingness to work through, at times, very difficult situations. But more than that, his fairness in dealing with myself. It really proves what a very good Chairman that you are, Senator Smith.

Today, just like 30 years ago, our State is taking steps to preserve New Jersey's future. By preserving drinking water supplies for millions of its residents, now the Highlands region of our state will be protected against overdevelopment, which threaten those water supplies, just as the Pinelands region was to protect it years ago. Much has been reported about the time it has taken for us to reach this milestone today. Remarkably, less than four months has passed since this 19-member Highlands Commission made its recommendation to the Governor. This is just a fraction of the time it took for similar discussions which occurred surrounding the Pinelands, and substantially less as compared to the four-plus years the Legislature took during the New Jersey Freshwater Wetlands debate.

When you compare the efforts of those in the past, today's accomplishments is both staggering in terms of the magnitude of its environmental gains, as well as the expeditious time frame it took to reach its legislative consensus. And the process and many gains were made both to improve the Highlands bill, as well, the right to right some of the wrongs of the past.

In this current debate, we had an opportunity to learn from the past, particularly the mistakes of the past, in order to ensure that the State was not going to repeat the same in other parts of the state. Along those lines, amendments were negotiated to provide sensible exemptions for certain single-family homes and for reconstruction, as well as for schools, places of worship, and hospitals in existence at the date of this enactment. We certainly do not need to revisit the many horrors of homeowners who struggled to build or expand homes in the Pinelands, or to make others suffer the same struggles of existing schools located in the Pinelands, that must meet stringent new requirements when they're forced to expand their facilities to accommodate the new growth mandated on their communities by the same act.

Similarly, sensible exclusions were provided for agriculture. And most recently, gains were made to help ensure that farming practices were not in conflict with long-standing best management practices, as recognized by both the State and Federal Government.

Some of those who have voiced their opinions during this Highlands debate have proclaimed that the original bill, or the many versions as Senator Smith has showed, was a good bill; it was perfect. I disagree. I believe the changes that have been made since then have strengthened the bill, as well as advanced other environmentally sound causes, and to right injustices that resulted in the past laws.

For most people who live outside south Jersey, many assume the Pinelands preservation effort was a complete success. The truth falls somewhere short of that belief. As the largest source of underground drinking water in the state, the Pinelands has been largely safeguarded from contamination.

Unfortunately, communities and homeowners have paid a large price tag for this preservation. Homeowners and landowners were never properly compensated for their land. The sewer bills skyrocketed in many a Pineland towns when they had to meet the most stringent discharge permits in the state. Property taxes skyrocketed due to large portions of towns being conserved.

The cost of these past mistakes -- I could not sit back while new property tax stabilization money was being provided to the Highlands towns alone. So we pushed, and on an equitable basis, extended that tax stabilization aid to the Pinelands. While conservation is a priority, it does not come without a price. I believe homeowners and landowners must be properly compensated for any property the State seeks to purchase in order to preserve. However, the priority cannot come at the expense of the rest of the state.

For those of us in south Jersey, we know that half of the undeveloped land in the state lies in the eight southern counties. As a result, it is critical for adequate funding to be available for both Green Acres and Farmland Preservation funds, to make sure that all regions of the state are protected. I believe parity amendments, included in the Highlands bill, will help ensure that.

My approach to this debate has been consistent from the start -- to use the first-hand experience in south Jersey with the Pinelands so the mistakes of the past are not repeated, and wherever possible to rectify those ill effects. It's not only a matter of fairness, it's a matter of common sense. And yet, I recognize that not all issues can be or should be addressed within this Highlands proposal. However, that does not mean that fight does not need to continue. One of the major lingering effects of the Pinelands Act is the mandated, directed

extraordinary growth that has resulted in the communities in the south. The extraordinary cost associated with the overdevelopment has resulted in skyrocketing school taxes.

I pledge my commitment to continue to work with my colleagues and Senator Gormley, who has been tirelessly working with me, to provide some necessary relief for those towns. Yet today is the time to reflect on the many enhancements we've made to the Highlands legislation, as well as the equity brought to all regions of the state.

In closing, just let me say I'm grateful to my colleagues on both sides of the aisle that have helped lend their voices today to celebrate this accomplishment. I am also grateful to my colleagues in the Senate Environmental Committee for the support and hard work in reaching consensus and producing an environmental accomplishment that will serve us well and long into the future.

Again, I want to thank everyone for their hard work. I think we've done our job, and I'm very comfortable with the bill moving forward now.

Thank you.

SENATOR SMITH: Thank you, Senator.

Senator McNamara.

SENATOR McNAMARA: I am pleased that we've made a step forward, and I do hope that it's not the final product that we're voting out of Committee today. There are certain other issues that should be addressed. One of my great concerns is that COAH housing, that no longer can be built within these communities -- as to where that housing will be placed and what the

impact is going to be on those particular towns. I believe it's a very serious issue.

I've also been assured by the administration that they're taking another look at the permanent -- the permanent -- financing to help these towns that, in fact, are going to face major problems in the out years because they will no longer be able to develop. I'm disappointed. I have a mayor and council in Ringwood that, had they supported the industrial zone, it would have been in the bill. They chose not to. And I think that, quite frankly, they made a mistake. Because in the out years, it's going to have a negative effect on their property tax rates.

I have to say that everyone on this Committee -- and Senator Smith and I had some differences at different points along the way -- but all of us have attempted to work to address the goal, which is to try to preserve the water. I'm not so sure that the science that was used was not political science, but it was a science. And I do say that we've accomplished a goal. I just hope and pray that the negative impact on those small property owners-- And those are the people that I care about. I don't doubt that the major builders will come out of it as a win-win. And I think you'll all find out, as time goes on, that's most probably true. But I will say this: I hope and pray that those small investors are protected. And I've been assured right from the very beginning, Senator Smith and the administration has said that they will give fair and equitable compensation to those property owners that are impacted. And I am relying on that when I voted for the bill.

And I thank you for your time.

SENATOR SMITH: Thank you, Senator.

Senator Ciesla.

SENATOR CIESLA: Thank you, Senator Smith.

Let me first congratulate you on the process that you employed in handling this bill. There's no doubt, on this very, very important piece of legislation -- that will fundamentally change land-use policy in the State of New Jersey -- you did a Herculean effort of trying to put together divergent views, of which you know that I hold one.

The bill clearly makes an underlying assumption that no development in this area will preserve water supplies for the future. Well, I know that no development will certainly help protect the water supplies, that goes without argument. I'm not certain that the best water protection possible is contained in the bill, as it is in front of us now. No development does not necessarily mean that we'll have water supplies for use in the future. I draw some of that conclusion from what's happened in south Jersey. Because as we know, when the Pinelands was protected, we were assured that the water supplies, the largest single water supply in the State of New Jersey, would now be protected for use by the residents of the State of New Jersey, at the time of the passing of that legislation. Yet, during times of crisis, whenever we address the underlying water in the Cohansey aquifer, we were advised scientifically that the water was just not available because of the very sensitive nature of the Pinelands.

I hope that is not the case here in the Highlands, where we are protecting areas that will be at the detriment of the population of the State of New Jersey rather than at the benefit. Scientifically, I do think that areas that really needed water supplies -- south Jersey, northeastern New Jersey -- are

absent from this bill. And we are going to be putting a great financial burden on the economy of the State, some of our smaller businessmen that live in that area, and the landowners. And there is no dedicated funding mechanism in this bill. It's a severe shortcoming. I hope that we can get through it.

The bill, though, clearly, Mr. Chairman, certainly is better than it was when it was introduced, and that's because of your stewardship. I am hopeful that the housing needs of New Jersey will somehow be met now that we've taken approximately one-sixth of the developable property out of the equation without identifying other areas of the state where development will occur. I think it is unreasonable to assume that the State will continue to be an economic actor in the northeast if we do not provide for the housing needs of the people that work within those areas. That's not addressed at all. Maybe it's not addressed by design.

But as I've watched the process, I can assure you, Mr. Chairman, that there has been no better process in my 12 years in the Legislature that I have seen. I hold a minority opinion, but congratulate you on being able to maneuver the bill through this process. And I'm hopeful that this will be the best that it could be for the State of New Jersey.

Congratulations, Mr. Chairman.

SENATOR SMITH: Thank you, Senator.

And my comments will be brief, but extremely happy and optimistic comments. You know, we had some moments where we had fits and starts on the legislation, but there was no senator on this panel that didn't agree with the goal, which is that we had to work to preserve the water supply for four-and-a-half million New Jerseyans. I would like to just commend, in the highest

possible terms, Governor McGreevey's leadership on this issue. When the Governor put that Task Force together and made sure that it was balanced -- that it had representatives of all the various communities, not only the elected officials but the economic interests, the environmental interests, the outdoors people, everyone, agricultural interests -- they put together a blueprint-- That Task Force put together an outstanding blueprint upon which this legislation is modeled. And that really gave us the guidelines that we needed to do this, I believe, in the most correct fashion. So to the Governor and to the Task Force, let me commend you for your leadership.

Today is a historic day, not just for the environment, but for the state. I think this will be the most -- one of the most significant things that we as legislators do in our tenure of office. And what I am thrilled to see is that it is bipartisan.

Senator Martin, who represents a good portion of the Highlands, I think took some unfair criticism from some of his constituents, even though many, many -- and I think the vast majority of his constituents -- are very much in favor of the Highlands legislation. But nothing is unanimous in New Jersey, and it takes someone with courage to stand up and do what's right. And I appreciate Senator Martin for, right up front, making this bipartisan legislation.

I am happy to see Senator McNamara join with us today. And I believe that when this legislation gets to the floor, it will have bipartisan support in both Houses.

That being said, I do believe that the process and the bill is better, because we senators acted like curmudgeons, which we're supposed to be, and

we made sure that the various concerns, not only of our local constituencies, but the statewide constituencies were met. And if there was any criticism of any senator by the media, I'd like to say that I thought it was a little unfair. I thought all the senators on this Committee worked hard to make this the best bill it could be.

On the House side, Assemblyman John McKeon is my hero. I think he is a great legislator. There's no one who worked any harder. And his efforts made this bill a much better bill. The process which we all talked about today -- here's seven of the nine of the hearings. (indicating stack) I've been in the Legislature 18 years, and I have never seen more public comment, a more open process than the process that was involved in the Highlands legislation, starting with the Task Force and ending up with our efforts today.

So I'd like to thank the environmentalists, and the builders, and the municipal and county officials, and all the citizens who came to all those hearings to help do the right thing. And as a result, I think we've done it.

The only-- And by the way, our leadership, as I understand it, has been just tremendous on this as well -- Senator Codey and Majority Leader Kenny and Speaker Sires and Majority Leader Roberts. It is my understanding that this bill may be posted as early as June 10. So, God willing, we're going to see Highlands done by our goal. Our goal was June 30. And hopefully, we're going to get that done.

The only note I have to say, and just to put everything in perspective, today what we've done is to ensure that the next drought won't be any worse than the last drought. We are only running in place. We're preserving what we have. And we still really have a water supply crisis in the

state, which we're going to have to address through water conservation and various water supply issues. I think we've done a very good thing today, but we have serious water problems. This is a real good start, and we have to continue to work on it.

Thanks to all the members of the Committee. Thanks to the public.

The meeting is adjourned. (applause)

One more comment that has to be made, and that is the unsung heroes. You know who the unsung heroes are? You know why this bill is here today, and the form that it's in? Because of OLS. (applause) Jeff Climpson, Judy Horowitz, Carrie Calvo-Hahn, Lucinda Tiajoloff, Mark Connelly, and Hannah Shostack -- they were terrific. They worked crazy hours to get it done, and congratulations to them.

**(MEETING CONCLUDED)**