

**SMART GROWTH OMBUDSMAN LEGISLATION****TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS  
SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS  
CHAPTER 27D. DEPARTMENT OF COMMUNITY AFFAIRS  
ARTICLE 1. GENERAL PROVISIONS**

*N.J. Stat. § 52:27D-10.2 (2005)*

§ 52:27D-10.2. Definitions relative to Smart Growth Ombudsman

As used in sections 2 and 3 of P.L. 2004, c. 89 (*C. 52:27D-10.3* and *C. 52:27D-10.4*):

"Applicant" means any person applying for a permit pursuant to section 5, 7, 9 or 10 of P.L. 2004, c. 89 (*C. 13:1D-145, C.27:1E-2, C. 52:27D-10.6* or *C. 13:1D-146*);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L. 2004, c. 89 (*C. 52:27D-10.3*);

"Permit" means any permit or approval issued by the Department of Environmental Protection, pursuant to any law, or any rule or regulation adopted pursuant thereto, provided that "permit" shall not include any approval of a grant, or a permit issued pursuant to the "Coastal Area Facility Review Act," P.L. 1973, c. 185 (*C. 13:19-1* et seq.), the "Air Pollution Control Act (1954)," P.L. 1954, c. 212 (*C. 26:2C-1* et seq.), the "Solid Waste Management Act," P.L. 1970, c. 39 (*C. 13:1E-1* et seq.), or the "Radiation Protection Act," P.L. 1958, c. 116 (*C. 26:2D-1* et seq.), any permit or approval issued by the Department of Transportation pursuant to any law, or any rule or regulation adopted pursuant thereto, or any permit or approval required as a condition of development or redevelopment issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (*C. 52:18A-196* et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (*C. 13:17-6*); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L. 1979, c. 111 (*C. 13:18A-8*); an urban enterprise zone designated pursuant to P.L. 1983, c. 303 (*C. 52:27H-60* et seq.) or P.L. 2001, c. 347 (*C. 52:27H-66.2* et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (*C. 40A:12A-5* and *40A:12A-6*) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

**HISTORY:** L. 2004, c. 89, § 1.

N.J. Stat. § 52:27D-10.3

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*N.J. Stat. § 52:27D-10.3 (2005)*

§ 52:27D-10.3. Smart Growth Ombudsman in DCA

a. There is created in the Department of Community Affairs a Smart Growth Ombudsman. The Smart Growth Ombudsman shall be appointed by the Governor, serve at the pleasure of the Governor, and report to the Governor.

b. The activities and duties of the Smart Growth Ombudsman shall be funded out of revenues collected pursuant to the fee schedule adopted pursuant to subsection d. of section 5, subsection d. of section 7 and subsection d. of section 9 of P.L. 2004, c. 89 (*C. 13:1D-145, C. 27:1E-2 and C. 52:27D-10.6*) and remitted to the Smart Growth Ombudsman.

c. The Smart Growth Ombudsman may call upon the assistance of the services of those employees of any State, county or municipal department, board, bureau, commission or agency as may be required and as may be necessary for its purposes. In addition, the Smart Growth Ombudsman may call upon any department, agency or office of the State of New Jersey for such documents, materials and information as it may deem necessary.

**HISTORY:** L. 2004, c. 89, § 2.

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*N.J. Stat. § 52:27D-10.4 (2005)*

§ 52:27D-10.4. Duties of Smart Growth Ombudsman

The Smart Growth Ombudsman shall:

a. in conjunction with the Directors of the Divisions of Smart Growth established pursuant to sections 5, 7 and 9 of P.L. 2004, c. 89 (*C.13:1D-145, C.27:1E-2 and C.52:27D-10.6*), review all relevant permit programs and requirements and make recommendations to the Governor and the departments regarding integration of multiple review and approval processes and recommendations on those permits for which approval may be expedited in smart growth areas through mechanisms such as permits-by-rule, general permits or qualification of professionals;

b. maintain and operate an informational website which shall enable any person to gain access to information regarding the statutory obligations and authority of the Smart Growth Ombudsman,

## N.J. Stat. § 52:27D-10.4

including those services which the ombudsman may provide to State permit applicants to facilitate or expedite permit approval and issuance;

c. at the request of an applicant, participate in the permit application and review process to ensure compliance with the time frames set forth in subsection c. of section 5, subsection c. of section 7 or subsection c. of section 9, or subsections c. and d. of section 10, as the case may be, of P.L. 2004, c. 89 (*C.13:1D-145, C.27:1E-2, C.52:27D-10.6* or *C.13:1D-146*);

d. review any new rules or regulations proposed by any State agency and determine whether the proposed rules or regulations, as they pertain to the smart growth areas, are consistent with the State Development and Redevelopment Plan. In the event that the Smart Growth Ombudsman determines that the proposed rules or regulations in the smart growth areas are not consistent with the State Development and Redevelopment Plan, the Smart Growth Ombudsman shall return the proposed rules or regulations to the State agency with recommended amendments necessary to make the proposed rules or regulations consistent with the State Development and Redevelopment Plan. A State agency shall not file proposed new rules or regulations for publication in the New Jersey Register unless and until the Smart Growth Ombudsman determines the proposed rules or regulations in the smart growth areas are consistent with the State Development and Redevelopment Plan. The requirements of this section may be waived upon a written determination by the Chief Counsel to the Governor that the proposed rules or regulations are required to implement a federal or State mandate; and

e. one year after the date of enactment of this act and annually thereafter, prepare a report which shall be transmitted to the Governor and the Legislature summarizing the activities of the ombudsman, including, but not limited to, a description of the permits, permit mechanisms, and permit processes that have been streamlined, a list of permit applications in which the ombudsman has participated, any rules or regulations that have been reviewed and the consistency determinations made by the ombudsman, and a report concerning the programs established for the registration and qualification of professionals by the Director of the Division of Smart Growth in the Department of Environmental Protection, the Department of Transportation, and the Department of Community Affairs.

As used in this section, "State agency" shall not include the Pinelands Commission established pursuant to P.L.1979, c. 111 (*C.13:18A-1* et seq.), the Highlands Water Protection and Planning Council established pursuant to P.L. 2004, c. 120 (*C.13:20-1* et al.) (pending before the Legislature as Senate Bill No. 1), or the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (*C.13:17-1* et seq.), or any independent authority or commission.

**HISTORY:** L. 2004, c. 89, § 3.

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*N.J. Stat. § 52:27D-10.5 (2005)*

## N.J. Stat. § 52:27D-10.5

## § 52:27D-10.5. Definitions relative to smart growth in DCA and expedited permits

As used in section 9 of P.L. 2004, c. 89 (*C. 52:27D-10.6*):

"Applicant" means any person applying for a permit pursuant to section 9 of P.L. 2004, c. 89 (*C. 52:27D-10.6*);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L. 2004, c. 89 (*C. 25:27D-10.3*);

"Permit" means any permit or approval required as a condition of development or redevelopment and issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (*C. 52:18A-196 et seq.*) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (*C. 13:17-6*); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L. 1979, c. 111 (*C. 13:18A-8*); an urban enterprise zone designated pursuant to P.L. 1983, c. 303 (*C. 52:27H-60 et seq.*) or P.L. 2001, c. 347 (*C. 52:27H-66.2 et al.*); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (*C. 40A:12A-5 and 40A:12A-6*) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

**HISTORY:** L. 2004, c. 89, § 8.

**NOTES:**

NEW JERSEY ADMINISTRATIVE CODE REFERENCES.

1. See *N.J.A.C. 5:36-1.1*.

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*N.J. Stat. § 52:27D-10.6 (2005)*

§ 52:27D-10.6. Division of Smart Growth established in DCA

## N.J. Stat. § 52:27D-10.6

a. There is established in the Department of Community Affairs a Division of Smart Growth under the direction of a director, who shall be appointed by the Governor and report to the Commissioner of Community Affairs. The director shall review and take action on permits for which the applicant has requested expedited review pursuant to this section.

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

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

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

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

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

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

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

## N.J. Stat. § 52:27D-10.6

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

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

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

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

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

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

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

## N.J. Stat. § 52:27D-10.6

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

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

**HISTORY:** L. 2004, c. 89, § 9.