

**SENATE, No. 265**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator ANDREW R. CIESLA**

**District 10 (Monmouth and Ocean)**

**SYNOPSIS**

Encourages consistency of municipal planning documents with the State Development and Redevelopment Plan.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 2/10/2004)**

1 AN ACT encouraging the consistency of municipal master plans with  
2 the State Development and Redevelopment Plan, amending  
3 P.L.1977, c.467 and supplementing P.L.1985, c.398 (C.52:18A-196  
4 et al.), P.L.1991, c.431 (C.40A:20-1 et seq.) and P.L.1975, c.291  
5 (C.40:55D-1 et seq.).

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9

10 1. (New section) a. Any municipality may petition the Office of  
11 State Planning for an endorsement of its planning portfolio. For the  
12 purposes of P.L. , c. (pending before the Legislature as this bill),  
13 "planning portfolio" means the municipal master plan, implementing  
14 zoning ordinances, other implementing development regulations and  
15 capital improvement program. The Office of State Planning shall  
16 endorse the planning portfolio upon finding that the plan, ordinances,  
17 regulations and program which constitute the portfolio are consistent  
18 with the State Development and Redevelopment Plan, as provided in  
19 subsection b. of this section.

20 In the case of a municipality assigned a fair share housing obligation  
21 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), the Office of State  
22 Planning shall not endorse the planning portfolio unless the  
23 municipality has demonstrated that it has received substantive  
24 certification by the Council on Affordable Housing and that it is in  
25 substantial compliance with the terms of substantive certification.

26 b. For the purposes of subsection a. of this section, the Office of  
27 State Planning shall determine that the planning portfolio of a  
28 municipality is consistent with the State Development and  
29 Redevelopment Plan whenever the petitioning municipality has  
30 demonstrated, to the satisfaction of the office:

31 (1) that the planning portfolio is in full compliance with the  
32 provisions of P.L.1975, c.291 (C.40:55D-1 et seq.);

33 (2) that it has complied with the provisions of section 19 of  
34 P.L.1975, c.291 (C.40:55D-28), and indicates that the proposed  
35 development of the municipality, as envisioned in the planning  
36 portfolio, is consistent with the master plans of contiguous  
37 municipalities, the master plan of the county in which the municipality  
38 is situated, the district solid waste management plan, and any  
39 redevelopment plan adopted for any portion of the municipality  
40 pursuant to the "Local Redevelopment and Housing Law," P.L.1992,  
41 c.79 (C.40A:12A-1 et seq.);

42 (3) that its master plan contains the policy statement required  
43 under paragraph (3) of subsection d. of section 19 of P.L.1975, c.291

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

**Matter underlined thus is new matter.**

1 (C.40:55D-28), and that the proposed development of the  
2 municipality, as evidenced in the planning portfolio, is consistent with  
3 the State Development and Redevelopment Plan, by explaining: (a)  
4 how the proposed development is consistent with State planning goals  
5 and strategies and Statewide policies enunciated in the State  
6 Development and Redevelopment Plan; (b) how the planning portfolio  
7 encourages development in those planning areas recommended for  
8 future growth and discourages development in environmentally  
9 sensitive planning areas; and (c) how the municipality's infrastructure  
10 planning, as evidenced in the planning portfolio, is consistent with and  
11 supports the pattern of growth envisioned in those planning  
12 documents; and

13 (4) that the various components of the planning portfolio have been  
14 developed with the benefit of public participation and in consultation  
15 with relevant civic groups, private for profit and non-profit  
16 development groups, and other governmental entities within and  
17 outside the jurisdiction of the planning entity, as appropriate to further  
18 the goals and implementation of those planning documents.

19 c. Upon the completion of the general reexamination of the master  
20 plan, as required pursuant to section 76 of P.L.1975, c.291  
21 (C.40:55D-89), or the revision or readoption of the State  
22 Development and Redevelopment Plan, as the case may be, the Office  
23 of State Planning shall reexamine any planning portfolio submitted by  
24 a municipality to ensure that the constituent planning documents  
25 remain consistent with the State Development and Redevelopment  
26 Plan.

27

28 2. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as  
29 follows:

30 7. a. There is hereby established a new home warranty security  
31 fund to be maintained by the State Treasurer and administered by the  
32 commissioner. The purpose of the fund is to provide moneys  
33 sufficient to pay claims by owners against builders participating in the  
34 fund for defects in new homes covered by the new home warranty.  
35 The amounts payable by participating builders shall be established and  
36 may be changed from time to time, as the experience of the fund shall  
37 require, by the commissioner, and shall be sufficient to cover  
38 anticipated claims, to provide a reasonable reserve and to cover the  
39 costs of administering the fund. Amounts paid by participating  
40 builders shall be forwarded to the State Treasurer and shall be  
41 accounted for and credited by him to the new home warranty security  
42 fund.

43 Notwithstanding any provisions of P.L.1977, c.467 (C.46:3B-1 et  
44 seq.), as amended, or any rules or regulations adopted pursuant  
45 thereto, participating builders shall not be liable for any amounts  
46 payable in any municipality whose planning portfolio has been

1 endorsed by the Office of State Planning pursuant to section 1 of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill). A  
3 new home owner of a home for which a participating builder has been  
4 forgiven payment pursuant to this section shall be covered for claims  
5 against defects in the same manner in which any other new home  
6 purchaser would otherwise be covered under P.L.1977, c.467.

7 b. The State Treasurer shall hold, manage and, through the  
8 Division of Investment, invest and reinvest moneys in the fund and  
9 credit all income earned thereon to the fund in the same manner as  
10 provided by law for the investment of pension and retirement funds  
11 administered by the State. The department shall keep the State  
12 Treasurer advised of anticipated cash demands for payment of claims  
13 against the fund.

14 c. Prior to making a claim against the fund for defects covered by  
15 the warranty, an owner shall notify the builder of such defects and  
16 allow a reasonable time period for their repair. If the repairs are not  
17 made within a reasonable time or are not satisfactory to the owner, he  
18 may file a claim against the fund in the form and manner prescribed by  
19 the commissioner. The commissioner shall investigate each claim to  
20 determine the validity thereof, and the amount of the award that shall  
21 be made thereon, and shall hold a hearing if requested by either party,  
22 in accordance with the provisions of the Administrative Procedures  
23 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested  
24 cases. Reasonable hearing fees shall be assessed against the  
25 unsuccessful party. The amount of the award shall be sufficient to  
26 cover the reasonable costs necessary to correct any defect or defects  
27 covered under the warranty, but the total amount of awards from the  
28 fund for any new home shall not exceed the purchase price of the  
29 home in the first good faith sale thereof or the fair market value on the  
30 home on its completion date if there is no good faith sale. All claims  
31 submitted by an owner shall first be reviewed through a conciliation or  
32 arbitration procedure by the department, and in the event that the  
33 owner is found to be in the right, then the builder shall be required to  
34 correct such claims as determined through the conciliation or  
35 arbitration procedure. If a builder is unable or willfully refuses to  
36 correct such deficiency, then an amount sufficient to cure the problem  
37 shall be paid from the fund to the owner. In such cases, the  
38 commissioner may then proceed against the builder in accordance with  
39 section 6b of this act. Upon certification from the commissioner of the  
40 amount of an award, the State Treasurer shall make payment to the  
41 claimant from the fund.

42 d. If at any time the moneys available in the fund are insufficient to  
43 satisfy outstanding awards and anticipated awards for the succeeding  
44 year, the commissioner shall, by regulation and after public hearing  
45 upon reasonable notice to all interested parties, require participating  
46 builders to pay additional amounts to replenish the fund, except for

1 those builders who are not liable pursuant to subsection a. of this  
2 section. The commissioner may also provide for surcharges against  
3 those participating builders who are responsible for a significant  
4 number of awards against the fund, and may discontinue the  
5 participation in the fund of any builder who is responsible for an  
6 excessive number of awards against the fund after a hearing in  
7 accordance with the provisions of the Administrative Procedures Act  
8 (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested cases.  
9 At no time shall the State be required to contribute any moneys to the  
10 fund, nor shall the State have any liability to any person having any  
11 right to or claim against the fund over and above the amount therein.  
12 (cf: P.L.1977, c.467, s.7)

13

14 3. (New section) To foster the implementation of the State  
15 Development and Redevelopment Plan, the Legislature determines, in  
16 accordance with the New Jersey Constitution, including without  
17 limitation, Article VIII, Section III, paragraph 1, that a municipality  
18 whose planning portfolio has been endorsed by the Office of State  
19 Planning may provide for a tax abatement within the municipality as  
20 provided hereunder and for a payment in lieu of taxes agreement, in  
21 accordance with P.L.1991, c.431 (C.40A:20-1 et seq.).

22 Any municipality whose planning portfolio has received the  
23 endorsement of the Office of State Planning pursuant to P.L. , c.  
24 (C. ) (pending before the Legislature as this bill) shall be deemed  
25 to have satisfied the requirement of declaring any section of the  
26 municipality as an area in need of redevelopment, as otherwise  
27 required under subsection b. of section 6 of P.L.1992, c.79  
28 (C.40A:12A-6), and may grant tax exemptions within the municipality  
29 without making individual declarations of blight and collect an annual  
30 service charge in lieu of taxes to be paid on the improvements of the  
31 project, pursuant to subsection b. of section 12 of P.L.1991, c.431  
32 (C.40A: 20-12). Notwithstanding this waiver, however, a municipality  
33 seeking to grant tax exemptions under the "Long Term Tax Exemption  
34 Law," P.L.1991, c.431 (C.40A:20-1 et seq.) shall otherwise be subject  
35 to the provisions of that law.

36

37 4. (New section) In any case challenging the development  
38 ordinances filed against a municipality whose planning portfolio has  
39 been endorsed by the Office of State Planning pursuant to section 1 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill),  
41 there shall be a presumption of validity attaching to those development  
42 regulations. To rebut the presumption of validity, the complainant  
43 shall have the burden of proof to demonstrate by clear and convincing  
44 evidence that the development regulations which are being contested  
45 are not consistent with the State Development and Redevelopment  
46 Plan.

1 The Office of State Planning shall be made a party to any suit  
2 challenging the development ordinances filed against any municipality  
3 whose planning portfolio has been endorsed by the Office of State  
4 Planning, and shall be empowered to present to the court its reasons  
5 for endorsing that municipality's planning portfolio.

6  
7 5. There is appropriated to the Office of State Planning in the  
8 Department of Community Affairs from the General Fund the sum of  
9 \$250,000 to enable that office to perform the determinations required  
10 pursuant to section 1 of this act.

11  
12 6. This act shall take effect on the 60th day next following  
13 enactment.

14  
15  
16 STATEMENT

17  
18 This bill would encourage municipalities to plan in a manner which  
19 furthers the Statewide planning goals and policies enunciated in the  
20 State Development and Redevelopment Plan.

21 The bill would establish a process through which municipalities  
22 would submit their planning portfolios to the Office of State Planning  
23 for endorsement. A "planning portfolio" is defined in the bill as the  
24 municipal master plan, zoning ordinance, any other implementing  
25 development regulations, and the capital improvement program.

26 The bill sets forth guidelines to govern the Office of State Planning  
27 in making its consistency endorsement. In order for a planning  
28 portfolio to be endorsed, it shall be demonstrated, to the satisfaction  
29 of the Office of State Planning, that:

30 (1) in the case of a municipality assigned a fair share housing  
31 obligation pursuant to the "Fair Housing Act," the municipality has  
32 received substantive certification and that it is in substantial  
33 compliance with the terms of that substantive certification;

34 (2) the planning portfolio is consistent with the "Municipal Land  
35 Use Law";

36 (3) the proposed development of the municipality, as envisioned in  
37 the planning portfolio, is consistent with the master plans of  
38 contiguous municipalities, the master plan of the county in which the  
39 municipality is situated, the district solid waste management plan, and  
40 any redevelopment plan adopted for any portion of the municipality  
41 pursuant to the "Local Redevelopment and Housing Law," P.L.1992,  
42 c.79 (C.40A:12A-1 et seq.).

43 (4) the proposed development of the municipality, as envisioned in  
44 the planning portfolio: is consistent with State planning goals and  
45 strategies and Statewide policies enunciated in the State Development  
46 and Redevelopment Plan; encourages development in those planning

1 areas recommended for future growth and discourages development  
2 in environmentally sensitive planning areas; and the municipality's  
3 infrastructure planning, as evidenced in the planning portfolio, is  
4 consistent with and supports the pattern of growth envisioned in those  
5 planning documents; and

6 (5) the planning portfolio has been adopted with the benefit of  
7 public participation and consultation with relevant groups in order to  
8 further the goals and implementation of those planning documents.

9 The Office of State Planning would reexamine any planning  
10 portfolio for endorsement upon the completion of the periodic  
11 reexamination required under the "Municipal Land Use Law" or any  
12 revision or readoption of the State Development and Redevelopment  
13 Plan.

14 The benefits of seeking the endorsement of the Office of State  
15 Planning under this bill are three:

16 (1) participating builders under the "New Home Warranty and  
17 Builders' Registration Act," would be exempted for those amounts  
18 payable under that act in any municipality which has received the  
19 endorsement of the Office of State Planning under the bill, though new  
20 home owners would continue to be covered for claims against defects  
21 in the same manner in which any other new home purchaser would  
22 otherwise be covered;

23 (2) endorsement by the Office of State Planning would be  
24 tantamount to declaring any section of the municipality as an area in  
25 need of redevelopment otherwise required under subsection b. of  
26 section 6 of P.L.1992, c.79 (C.40A:12A-6), thereby promoting long-  
27 term redevelopment within those municipalities; and

28 (3) the development regulations of any municipality whose  
29 planning portfolio has received the endorsement of the Office of State  
30 Planning shall be presumed valid and in order to rebut that  
31 presumption of validity, the complainant shall bear the burden of proof  
32 to demonstrate by clear and convincing evidence that the development  
33 regulations which are being contested are not consistent with the State  
34 Development and Redevelopment Plan. The Office of State Planning  
35 shall be made a party to any such suit challenging the development  
36 ordinances filed against any municipality whose planning portfolio has  
37 been endorsed thereby, and shall be empowered to present to the court  
38 its reasons for endorsing that municipality's planning portfolio.

39 The bill appropriates the sum of \$250,000 to the Office of State  
40 Planning to enable it to fulfill the functions assigned to it under this  
41 bill.