

ASSEMBLY, No. 1908

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Authorizes adoption of timed-growth ordinances by municipalities.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT authorizing the adoption of timed-growth ordinances,
2 amending P.L.1975, c.291 and P.L.1989, c.86, and
3 supplementing P.L.1975, c.291.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1, 2, 6, 8 and 13 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill) shall be
10 known and may be cited as the "Municipal Timed-Growth
11 Ordinance Authorization Act."

12
13 2. (New section) The Legislature finds and declares that:

14 a. Over the past number of years, the State of New Jersey has
15 experienced unprecedented economic growth which has resulted in
16 substantial building and development activity throughout the State;

17 b. While the building boom of the 1980's was a positive
18 phenomenon to the extent that it was associated with the growth of
19 jobs and a higher standard of living, the rapid rate of development
20 in those years also created major public policy challenges, in
21 particular, upgrading the existing infrastructure to support that
22 growth and allow for future development;

23 c. Of the considerable impacts associated with new
24 development, the burden it places on an older, and often inadequate
25 infrastructure is one which the Legislature views with particular
26 concern in light of the potential dangers associated with
27 deteriorating water supply facilities and sewer systems and the
28 pressure which that development places on educational facilities
29 and a long-neglected road network which already handles
30 dangerously high levels of traffic; and

31 d. It is therefore a valid public policy of the State and in the
32 public interest that municipalities be enabled to coordinate new
33 development with their ability to make those improvements in the
34 local infrastructure which are necessary to accommodate the new
35 development.

36
37 3. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to
38 read as follows:

39 3. For the purposes of this act, unless the context clearly
40 indicates a different meaning:

41 The term "shall" indicates a mandatory requirement, and the term
42 "may" indicates a permissive action.

43 "Administrative officer" means the clerk of the municipality,
44 unless a different municipal official or officials are designated by
45 ordinance or statute.

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

Matter underlined thus is new matter.

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1 "Agricultural land" means "farmland" as defined pursuant to
2 section 3 of P.L.1999, c.152 (C.13:8C-3).

3 "Applicant" means a developer submitting an application for
4 development.

5 "Application for development" means the application form and
6 all accompanying documents required by ordinance for approval of
7 a subdivision plat, site plan, planned development, conditional use,
8 zoning variance or direction of the issuance of a permit pursuant to
9 section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or
10 C.40:55D-36).

11 "Approving authority" means the planning board of the
12 municipality, unless a different agency is designated by ordinance
13 when acting pursuant to the authority of P.L.1975, c.291
14 (C.40:55D-1 et seq.).

15 "Board of adjustment" means the board established pursuant to
16 section 56 of P.L.1975, c.291 (C.40:55D-69).

17 "Building" means a combination of materials to form a
18 construction adapted to permanent, temporary, or continuous
19 occupancy and having a roof.

20 "Cable television company" means a cable television company as
21 defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

22 "Capital improvement" means **[a governmental acquisition of**
23 **real property or major construction project]** any facility for the
24 provision of public services, including educational facilities, with a
25 life expectancy of three or more years, owned and operated by or on
26 behalf of the State or a political subdivision thereof.

27 "Circulation" means systems, structures and physical
28 improvements for the movement of people, goods, water, air,
29 sewage or power by such means as streets, highways, railways,
30 waterways, towers, airways, pipes and conduits, and the handling of
31 people and goods by such means as terminals, stations, warehouses,
32 and other storage buildings or transshipment points.

33 "Common open space" means an open space area within or
34 related to a site designated as a development, and designed and
35 intended for the use or enjoyment of residents and owners of the
36 development. Common open space may contain such
37 complementary structures and improvements as are necessary and
38 appropriate for the use or enjoyment of residents and owners of the
39 development.

40 "Conditional use" means a use permitted in a particular zoning
41 district only upon a showing that such use in a specified location
42 will comply with the conditions and standards for the location or
43 operation of such use as contained in the zoning ordinance, and
44 upon the issuance of an authorization therefor by the planning
45 board.

46 "Conventional" means development other than planned
47 development.

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1 "County agriculture development board" or "CADB" means a
2 county agriculture development board established by a county
3 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-
4 14).

5 "County master plan" means a composite of the master plan for
6 the physical development of the county in which the municipality is
7 located, with the accompanying maps, plats, charts and descriptive
8 and explanatory matter adopted by the county planning board
9 pursuant to R.S.40:27-2 and R.S.40:27-4.

10 "County planning board" means the county planning board, as
11 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
12 in which the land or development is located.
13 (cf: P.L.2004, c.2, s.32)

14

15 4. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
16 read as follows:

17 3.1. "Days" means calendar days.

18 "Density" means the permitted number of dwelling units per
19 gross area of land to be developed.

20 "Developer" means the legal or beneficial owner or owners of a
21 lot or of any land proposed to be included in a proposed
22 development, including the holder of an option or contract to
23 purchase, or other person having an enforceable proprietary interest
24 in such land.

25 "Development" means the division of a parcel of land into two or
26 more parcels, the construction, reconstruction, conversion,
27 structural alteration, relocation or enlargement of any building or
28 other structure, or of any mining excavation or landfill, and any use
29 or change in the use of any building or other structure, or land or
30 extension of use of land, for which permission may be required
31 pursuant to this act.

32 "Development potential" means the maximum number of
33 dwelling units or square feet of nonresidential floor area that may
34 be constructed on a specified lot or in a specified zone under the
35 master plan and land use regulations in effect on the date of the
36 adoption of the development transfer ordinance, and in accordance
37 with recognized environmental constraints.

38 "Development regulation" means a zoning ordinance,
39 subdivision ordinance, site plan ordinance, official map ordinance
40 or other municipal regulation of the use and development of land, or
41 amendment thereto adopted and filed pursuant to this act.

42 "Development transfer" or "development potential transfer"
43 means the conveyance of development potential, or the permission
44 for development, from one or more lots to one or more other lots by
45 deed, easement, or other means as authorized by ordinance.

46 "Development transfer bank" means a development transfer bank
47 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
48 or the State TDR Bank.

1 "Drainage" means the removal of surface water or groundwater
2 from land by drains, grading or other means and includes control of
3 runoff during and after construction or development to minimize
4 erosion and sedimentation, to assure the adequacy of existing and
5 proposed culverts and bridges, to induce water recharge into the
6 ground where practical, to lessen nonpoint pollution, to maintain
7 the integrity of stream channels for their biological functions as
8 well as for drainage, and the means necessary for water supply
9 preservation or prevention or alleviation of flooding.

10 "Environmental commission" means a municipal advisory body
11 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

12 "Erosion" means the detachment and movement of soil or rock
13 fragments by water, wind, ice and gravity.

14 "Facility expansion" means the expansion of the capacity of an
15 existing capital improvement in order that the improvement may
16 serve new development.

17 "Final approval" means the official action of the planning board
18 taken on a preliminarily approved major subdivision or site plan,
19 after all conditions, engineering plans and other requirements have
20 been completed or fulfilled and the required improvements have
21 been installed or guarantees properly posted for their completion, or
22 approval conditioned upon the posting of such guarantees.

23 "Floor area ratio" means the sum of the area of all floors of
24 buildings or structures compared to the total area of the site.

25 "General development plan" means a comprehensive plan for the
26 development of a planned development, as provided in section 4 of
27 P.L.1987, c.129 (C.40:55D-45.2).

28 "Governing body" means the chief legislative body of the
29 municipality. In municipalities having a board of public works,
30 "governing body" means such board.

31 "Historic district" means one or more historic sites and
32 intervening or surrounding property significantly affecting or
33 affected by the quality and character of the historic site or sites.

34 "Historic site" means any real property, man-made structure,
35 natural object or configuration or any portion or group of the
36 foregoing of historical, archeological, cultural, scenic or
37 architectural significance.

38 "Inherently beneficial use" means a use which is universally
39 considered of value to the community because it fundamentally
40 serves the public good and promotes the general welfare. Such a
41 use includes, but is not limited to, a hospital, school, child care
42 center, group home, or a wind, solar or photovoltaic energy facility
43 or structure.

44 "Instrument" means the easement, credit, or other deed
45 restriction used to record a development transfer.

46 "Interested party" means: (a) in a criminal or quasi-criminal
47 proceeding, any citizen of the State of New Jersey; and (b) in the
48 case of a civil proceeding in any court or in an administrative

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1 proceeding before a municipal agency, any person, whether residing
2 within or without the municipality, whose right to use, acquire, or
3 enjoy property is or may be affected by any action taken under this
4 act, or whose rights to use, acquire, or enjoy property under this act,
5 or under any other law of this State or of the United States have
6 been denied, violated or infringed by an action or a failure to act
7 under this act.

8 "Land" includes improvements and fixtures on, above or below
9 the surface.

10 "Local utility" means any sewerage authority created pursuant to
11 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
12 seq.); any utilities authority created pursuant to the "municipal and
13 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
14 seq.); or any utility, authority, commission, special district or other
15 corporate entity not regulated by the Board of Regulatory
16 Commissioners under Title 48 of the Revised Statutes that provides
17 gas, electricity, heat, power, water or sewer service to a
18 municipality or the residents thereof.

19 "Lot" means a designated parcel, tract or area of land established
20 by a plat or otherwise, as permitted by law and to be used,
21 developed or built upon as a unit.

22 (cf: P.L.2009, c.146, s.1)

23

24 5. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to
25 read as follows:

26 3.4 "Sedimentation" means the deposition of soil that has been
27 transported from its site of origin by water, ice, wind, gravity or
28 other natural means as a product of erosion.

29 "Service area" means that area to be served by the capital
30 improvement or facility expansion as designated in the capital
31 improvement program adopted by a municipality under section 8 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).

33 "Service unit" means a standardized measure of consumption,
34 use, generation or discharge attributable to an individual unit of
35 development calculated in accordance with generally accepted
36 engineering or planning standards for a particular category of
37 capital improvements or facility expansions.

38 "Site plan" means a development plan of one or more lots on
39 which is shown (1) the existing and proposed conditions of the lot,
40 including but not necessarily limited to topography, vegetation,
41 drainage, flood plains, marshes and waterways, (2) the location of
42 all existing and proposed buildings, drives, parking spaces,
43 walkways, means of ingress and egress, drainage facilities, utility
44 services, landscaping, structures and signs, lighting, screening
45 devices, and (3) any other information that may be reasonably
46 required in order to make an informed determination pursuant to an
47 ordinance requiring review and approval of site plans by the
48 planning board adopted pursuant to article 6 of **[this act]** P.L.1975,

1 c.291 (C.40:55D-1 et seq.).

2 "Standards of performance" means standards (1) adopted by
3 ordinance pursuant to subsection **[52d]** d. of section 52 of
4 P.L.1975, c.291 (C.40:55D-65) regulating noise levels, glare,
5 earthborne or sonic vibrations, heat, electronic or atomic radiation,
6 noxious odors, toxic matters, explosive and inflammable matters,
7 smoke and airborne particles, waste discharge, screening of
8 unsightly objects or conditions and such other similar matters as
9 may be reasonably required by the municipality or (2) required by
10 applicable Federal or State laws or municipal ordinances.

11 "Street" means any street, avenue, boulevard, road, parkway,
12 viaduct, drive or other way (1) which is an existing State, county or
13 municipal roadway, or (2) which is shown upon a plat heretofore
14 approved pursuant to law, or (3) which is approved by official
15 action as provided by this act, or (4) which is shown on a plat duly
16 filed and recorded in the office of the county recording officer prior
17 to the appointment of a planning board and the grant to such board
18 of the power to review plats; and includes the land between the
19 street lines, whether improved or unimproved, and may comprise
20 pavement, shoulders, gutters, curbs, sidewalks, parking areas and
21 other areas within the street lines.

22 "Structure" means a combination of materials to form a
23 construction for occupancy, use or ornamentation whether installed
24 on, above, or below the surface of a parcel of land.

25 "Subdivision" means the division of a lot, tract or parcel of land
26 into two or more lots, tracts, parcels or other divisions of land for
27 sale or development. The following shall not be considered
28 subdivisions within the meaning of this act, if no new streets are
29 created: (1) divisions of land found by the planning board or
30 subdivision committee thereof appointed by the chairman to be for
31 agricultural purposes where all resulting parcels are five acres or
32 larger in size, (2) divisions of property by testamentary or intestate
33 provisions, (3) divisions of property upon court order, including but
34 not limited to judgments of foreclosure, (4) consolidation of
35 existing lots by deed or other recorded instrument and (5) the
36 conveyance of one or more adjoining lots, tracts or parcels of land,
37 owned by the same person or persons and all of which are found
38 and certified by the administrative officer to conform to the
39 requirements of the municipal development regulations and are
40 shown and designated as separate lots, tracts or parcels on the tax
41 map or atlas of the municipality. The term "subdivision" shall also
42 include the term "resubdivision."

43 "Timed-growth district" means an area within a municipality in
44 which the ability to develop may be delayed in accordance with a
45 timed-growth ordinance adopted pursuant to P.L. , c. (C.)(now
46 before the Legislature as this bill).

47 "Transcript" means a typed or printed verbatim record of the
48 proceedings or reproduction thereof.

1 "Variance" means permission to depart from the literal
2 requirements of a zoning ordinance pursuant to section 47 [and],
3 subsection [29.2b., 57c. and 57d.] b. of section 29.2, and
4 subsections c. and d. of section 57 of [this act] P.L.1975, c.291
5 (C.40:55D-60, 40:55D-40 and 40:55D-70).

6 "Zoning permit" means a document signed by the administrative
7 officer (1) which is required by ordinance as a condition precedent
8 to the commencement of a use or the erection, construction,
9 reconstruction, alteration, conversion or installation of a structure or
10 building and (2) which acknowledges that such use, structure or
11 building complies with the provisions of the municipal zoning
12 ordinance or variance therefrom duly authorized by a municipal
13 agency pursuant to sections 47 and 57 of [this act] P.L.1975, c.291
14 (C.40:55D-60 and 40:55D-70).

15 (cf: P.L.1979, c.216, s.4)

16

17 6. (New section) a. Any municipality which has adopted a
18 master plan pursuant to section 19 of P.L.1975, c.291 (C.40:55D-
19 28) and a capital improvement plan pursuant to section 8 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill) may
21 adopt an ordinance under which approval of applications for
22 development in certain areas of the municipality may be delayed in
23 accordance with the requirements of P.L. , c. (C.)(now
24 before the Legislature as this bill).

25 b. Any timed-growth ordinance adopted pursuant to this
26 section shall include detailed guidelines regarding: (1) the number
27 of timed-growth districts and their geographic location and legal
28 boundaries; (2) the quantity of development which will be timed or
29 paced in each district, and the schedule for that timing; (3) a
30 delineation of service areas for each capital improvement whose
31 upgrading or expansion is necessary to support the development in
32 each district; (4) the ability for a developer to accelerate
33 development rights for a project within a district by the payment of
34 the costs associated with the proposed development based on its
35 estimated effect on each service unit; and (5) a schedule which
36 clearly sets forth the amount to be charged for each service unit in
37 the event development rights are accelerated.

38 c. No ordinance shall be adopted which imposes timed-growth
39 in a district in which is proposed, in writing and at the time of the
40 ordinance adoption, any residential development which includes
41 housing affordable to low or moderate income households, as
42 defined under P.L.1985, c.222 (C.52:27D-301 et al.) and which
43 would be eligible for credit pursuant to that act or for implementing
44 any court ordered judgment for repose, or in any district which is
45 contiguous to any such residential development, regardless of
46 whether such residential development is located outside of the
47 municipality.

48 d. No timed-growth ordinance may impose any development

1 restrictions on an individual wishing to build a one or two dwelling-
2 unit building.

3 e. No timed-growth ordinance shall be applied retroactively to
4 deny approval to any application for development which had
5 received preliminary approval prior to the adoption of such an
6 ordinance; and

7 f. The delay or prohibition of development within a timed-
8 growth ordinance shall be limited in duration to the time remaining
9 before a revision of the master plan is required under P.L.1975,
10 c.291 (40:55D-1 et seq.).

11 g. A timed-growth district created by ordinance shall conform
12 as nearly as practicable with the State Development and
13 Redevelopment Plan adopted pursuant to section 4 of P.L.1985,
14 c.398 (C.52:18A-199).

15 h. Any payment received by a municipality for acceleration of
16 development rights shall be transmitted by the municipality to the
17 appropriate entity or entities in proportion to the service unit costs
18 calculated pursuant to this section. Monies received by a school
19 district pursuant to this section shall be deposited into the
20 appropriate capital reserve or debt service accounts.

21

22 7. Section 20 of P.L.1975, c.291 (C.40:55D-29) is amended to
23 read as follows:

24 20. a. The governing body of any municipality which does not
25 authorize the preparation of a program of municipal capital
26 improvements for the purposes of adopting a timed-growth
27 ordinance pursuant to section 6 of P.L. , c. (C.) (pending
28 before the Legislature as this bill) may authorize the planning board
29 from time to time to prepare a program of municipal capital
30 improvement projects projected over a term of at least **[6]** 10 years,
31 and amendments thereto. Such program may encompass major
32 projects being currently undertaken or future projects to be
33 undertaken, with federal, State, county and other public funds or
34 under federal, State or county supervision. The first year of such
35 program shall, upon adoption by the governing body, constitute the
36 capital budget of the municipality as required by N.J.S.40A:4-43 et
37 seq. The program shall classify projects in regard to the urgency
38 and need for realization, and shall recommend a time sequence for
39 their implementation. The program may also contain the estimated
40 cost of each project and indicate probable operating and
41 maintenance costs and probable revenues, if any, as well as existing
42 sources of funds or the need for additional sources of funds for the
43 implementation and operation of each project. The program shall, as
44 far as possible, be based on existing information in the possession
45 of the departments and agencies of the municipality and shall take
46 into account public facility needs indicated by the prospective
47 development shown in the master plan of the municipality or as
48 permitted by other municipal land use controls.

1 In preparing the program, the planning board shall confer, in a
2 manner deemed appropriate by the board, with the mayor, the chief
3 fiscal officer, other municipal officials and agencies, and the school
4 board or boards.

5 Any such program shall include an estimate of the displacement
6 of persons and establishments caused by each recommended
7 project.

8 b. In addition to any of the requirements in subsection a. of this
9 section, whenever the planning board is authorized and directed to
10 prepare a capital improvements program, every municipal
11 department, authority or agency shall, upon request of the planning
12 board, transmit to said board a statement of all capital projects
13 proposed to be undertaken by such municipal department, authority
14 or agency, during the term of the program, for study, advice and
15 recommendation by the planning board.

16 c. In addition to all of the other requirements of this section,
17 any municipality that intends to provide for the transfer of
18 development within its jurisdiction pursuant to section 3 of
19 P.L.2004, c.2 (C.40:55D-139) shall include within its capital
20 improvement program provision for those capital projects to be
21 undertaken in the receiving zone or zones required as a condition
22 for adopting a development transfer ordinance pursuant to
23 subsection b. of section 4 of P.L.2004, c.2 (C.40:55D-140).

24 (cf: P.L.2004, c.2, s.38)

25

26 8. (New section) Prior to the adoption by the municipal
27 governing body of a timed-growth ordinance authorized pursuant to
28 section 6 of P.L. , c. (C.) (pending before the Legislature
29 as this bill), the planning board shall have prepared, and the
30 governing body shall have adopted a program of municipal capital
31 improvement projects projected over a term of ten years and
32 amendments thereto. The governing body shall adopt the capital
33 improvement program in accordance with the provisions of section
34 21 of P.L.1975, c.291 (C.40:55D-30). The capital improvement
35 program shall be consistent with the municipal master plan and with
36 the State Development and Redevelopment Plan adopted pursuant
37 to section 4 of P.L.1985, c.398 (C.52:18A-199). Upon adoption,
38 the program shall be updated annually and revised to take account
39 of changes in anticipated usage based on variances granted in the
40 previous year.

41 The program shall include:

42 a. a description of existing capital improvements, including but
43 not limited to, transportation, water treatment and distribution,
44 wastewater treatment and sewerage, flood control and storm water
45 management, and educational facilities, a map or maps depicting
46 the service area of each improvement and the costs to improve or
47 replace those improvements in order to meet existing or prospective
48 demand or stricter safety, environmental or regulatory standards;

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1 b. an analysis of total capacity, level of current usage and
2 anticipated usage of existing capital improvements based on final
3 approvals already granted pursuant to P.L.1975, c.291 (C.40:55D-1
4 et seq.) or patterns of current usage;

5 c. a description of future need for capital improvements and
6 facility expansions based on the master plan adopted pursuant to
7 section 19 of P.L.1975, c.291 (C.40:55D-28) or based upon
8 anticipated levels of usage from school district data and projections;

9 d. a projection of the total number of service units which will
10 result from new development anticipated in the master plan; and

11 e. a schedule establishing a specific level of quantity of use,
12 consumption, generation or discharge of a service unit for each
13 category of capital improvement or expansion.

14 The program shall classify projects in regard to the urgency and
15 need for realization, and shall recommend a time sequence for their
16 implementation. The program shall also contain the estimated cost
17 of each project and indicate probable operating and maintenance
18 costs and probable revenues, if any, as well as existing sources of
19 funds or the need for additional sources of funds for the
20 implementation and operation of each project.

21 The program shall encompass major projects being currently
22 undertaken or future projects to be undertaken, with federal, State,
23 county and other public funds or under federal, State or county
24 supervision. The first year of the program shall, upon adoption by
25 the governing body, constitute the capital budget of the
26 municipality as required by N.J.S.40A:4-43 et seq.

27 The program shall, as far as possible, be based on existing
28 information in the possession of the departments and agencies of
29 the municipality and shall take into account public facility needs
30 indicated by the prospective development shown in the master plan
31 of the municipality or as permitted by other municipal land use
32 controls.

33 In preparing the program, the planning board shall confer, in a
34 manner deemed appropriate by the board, with the mayor, the chief
35 financial officer, other municipal officials and agencies, and the
36 school board or boards.

37 The program shall include an estimate of the displacement of
38 persons and establishments caused by each recommended project.

39 In addition to any of the above requirements, whenever the
40 planning board is authorized and directed to prepare a capital
41 improvement program, every municipal department, authority or
42 agency shall, upon request of the planning board, transmit to the
43 board a statement of all capital projects proposed to be undertaken
44 by that municipal department, authority or agency, during the term
45 of the program, for study, advice and recommendation by the
46 planning board.

47

48 9. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to

1 read as follows:

2 6. Hearings. a. The municipal agency shall hold a hearing on
3 each application for development, adoption, revision or amendment
4 of the master plan, each application for approval of an outdoor
5 advertising sign submitted to the municipal agency as required
6 pursuant to an ordinance adopted under subsection g. of section
7 29.1 of P.L.1975, c.291 (C.40:55D-39), **[or]** any review undertaken
8 by a planning board pursuant to section 22 of P.L.1975, c.291
9 (C.40:55D-31) or capital improvement program adopted pursuant to
10 section 8 of P.L. , c. (C.) (pending before the Legislature
11 as this bill).

12 b. The municipal agency shall make the rules governing such
13 hearings. Any maps and documents for which approval is sought at
14 a hearing shall be on file and available for public inspection at least
15 10 days before the date of the hearing, during normal business
16 hours in the office of the administrative officer. The applicant may
17 produce other documents, records, or testimony at the hearing to
18 substantiate or clarify or supplement the previously filed maps and
19 documents.

20 c. The officer presiding at the hearing or such person as he may
21 designate shall have power to administer oaths and issue subpoenas
22 to compel the attendance of witnesses and the production of
23 relevant evidence, including witnesses and documents presented by
24 the parties, and the provisions of the "County and Municipal
25 Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall
26 apply.

27 d. The testimony of all witnesses relating to an application for
28 development shall be taken under oath or affirmation by the
29 presiding officer, and the right of cross-examination shall be
30 permitted to all interested parties through their attorneys, if
31 represented, or directly, if not represented, subject to the discretion
32 of the presiding officer and to reasonable limitations as to time and
33 number of witnesses.

34 e. Technical rules of evidence shall not be applicable to the
35 hearing, but the agency may exclude irrelevant, immaterial or
36 unduly repetitious evidence.

37 f. The municipal agency shall provide for the verbatim
38 recording of the proceedings by either stenographer, mechanical or
39 electronic means. The municipal agency shall furnish a transcript,
40 or duplicate recording in lieu thereof, on request to any interested
41 party at his expense; provided that the governing body may provide
42 by ordinance for the municipality to assume the expense of any
43 transcripts necessary for appeal to the governing body, pursuant to
44 section 8 of **[this act]** P.L.1975, c.291 (C.40:55D-17), of decisions
45 by the zoning board of adjustment pursuant to subsection **[57d.] d.**
46 of section 57 of **[this act]** P.L.1975, c.291 (C.40:55D-70), up to a
47 maximum amount as specified by the ordinance.

48 The municipal agency, in furnishing a transcript or tape of the

1 proceedings to an interested party at his expense, shall not charge
2 such interested party more than the actual cost of preparing the
3 transcript or tape. Transcripts shall be certified in writing by the
4 transcriber to be accurate.

5 g. The municipal agency shall include findings of fact and
6 conclusions based thereon in each decision on any application for
7 development and shall reduce the decision to writing. The
8 municipal agency shall provide the findings and conclusions
9 through:

10 (1) A resolution adopted at a meeting held within the time
11 period provided in the act for action by the municipal agency on the
12 application for development; or

13 (2) A memorializing resolution adopted at a meeting held not
14 later than 45 days after the date of the meeting at which the
15 municipal agency voted to grant or deny approval. Only the
16 members of the municipal agency who voted for the action taken
17 may vote on the memorializing resolution, and the vote of a
18 majority of such members present at the meeting at which the
19 resolution is presented for adoption shall be sufficient to adopt the
20 resolution. If only one member who voted for the action attends the
21 meeting at which the resolution is presented for adoption, the
22 resolution may be adopted upon the vote of that member. An action
23 pursuant to section 5 of **the act** P.L.1975, c.291 (C.40:55D-9)
24 (resulting from the failure of a motion to approve an application)
25 shall be memorialized by resolution as provided above, with those
26 members voting against the motion for approval being the members
27 eligible to vote on the memorializing resolution. The vote on any
28 such resolution shall be deemed to be a memorialization of the
29 action of the municipal agency and not to be an action of the
30 municipal agency; however, the date of the adoption of the
31 resolution shall constitute the date of the decision for purposes of
32 the mailings, filings and publications required by subsections h. and
33 i. of this section **[(C.40:55D-10)]**. If the municipal agency fails to
34 adopt a resolution or memorializing resolution as hereinabove
35 specified, any interested party may apply to the Superior Court in a
36 summary manner for an order compelling the municipal agency to
37 reduce its findings and conclusions to writing within a stated time,
38 and the cost of the application, including attorney's fees, shall be
39 assessed against the municipality.

40 h. A copy of the decision shall be mailed by the municipal
41 agency within 10 days of the date of decision to the applicant or, if
42 represented, then to his attorney, without separate charge, and to all
43 who request a copy of the decision, for a reasonable fee. A copy of
44 the decision shall also be filed by the municipal agency in the office
45 of the administrative officer. The administrative officer shall make
46 a copy of such filed decision available to any interested party for a
47 reasonable fee and available for public inspection at his office
48 during reasonable hours.

1 i. A brief notice of the decision shall be published in the
2 official newspaper of the municipality, if there be one, or in a
3 newspaper of general circulation in the municipality. Such
4 publication shall be arranged by the applicant unless a particular
5 municipal officer is so designated by ordinance; provided that
6 nothing contained in this act shall be construed as preventing the
7 applicant from arranging such publication if he so desires. The
8 municipality may make a reasonable charge for its publication. The
9 period of time in which an appeal of the decision may be made shall
10 run from the first publication of the decision, whether arranged by
11 the municipality or the applicant.

12 (cf: P.L.2004, c.42, s.5)

13

14 10. Section 76 of P.L.1975, c.291 (C.40:55D-89) is amended to
15 read as follows:

16 76. Periodic examination. The governing body shall, at least
17 every ~~【six】~~ ten years, provide for a general reexamination of its
18 master plan and development regulations by the planning board,
19 which shall prepare and adopt by resolution a report on the findings
20 of such reexamination, a copy of which report and resolution shall
21 be sent to the county planning board. A notice that the report and
22 resolution have been prepared shall be sent to the municipal clerk of
23 each adjoining municipality, who may, on behalf of the governing
24 body of the municipality, request a copy of the report and
25 resolution. A reexamination shall be completed at least once every
26 ~~【six】~~ 10 years from the previous reexamination.

27 The reexamination report shall state:

28 a. The major problems and objectives relating to land
29 development in the municipality at the time of the adoption of the
30 last reexamination report.

31 b. The extent to which such problems and objectives have been
32 reduced or have increased subsequent to such date.

33 c. The extent to which there have been significant changes in
34 the assumptions, policies, and objectives forming the basis for the
35 master plan or development regulations as last revised, with
36 particular regard to the density and distribution of population and
37 land uses, housing conditions, circulation, conservation of natural
38 resources, energy conservation, collection, disposition, and
39 recycling of designated recyclable materials, and changes in State,
40 county and municipal policies and objectives.

41 d. The specific changes recommended for the master plan or
42 development regulations, if any, including underlying objectives,
43 policies and standards, or whether a new plan or regulations should
44 be prepared.

45 e. The recommendations of the planning board concerning the
46 incorporation of redevelopment plans adopted pursuant to the
47 "Local Redevelopment and Housing Law," P.L.1992, c.79
48 (C.40A:12A-1 et al.) into the land use plan element of the municipal

1 master plan, and recommended changes, if any, in the local
2 development regulations necessary to effectuate the redevelopment
3 plans of the municipality.
4 (cf: P.L.2001, c.342, s.9)

5
6 11. Section 77 of P.L.1975, c.291 (C.40:55D-90) is amended to
7 read as follows:

8 77. Moratoriums; interim zoning. a. The prohibition of
9 development in order to prepare a master plan and development
10 regulations is prohibited.

11 b. No moratoria on applications for development or interim
12 zoning ordinances shall be permitted except:

13 (1) in cases **[where]** in which the municipality demonstrates on
14 the basis of a written opinion by a qualified health professional that
15 a clear imminent danger to the health of the inhabitants of the
16 municipality exists, and **[in no case shall]** the moratorium or
17 interim ordinance does not exceed a six-month term;

18 (2) in cases in which a moratorium is imposed pursuant to a
19 timed-growth ordinance adopted in accordance with the provisions
20 of P.L. , c. (C.)(now before the Legislature as this bill).

21 (cf: P.L.2001, c.342, s.9)

22
23 12. Section 11 of P.L.1989, c.86 (C.40:55D-123) is amended to
24 read as follows:

25 11. a. The development transfer ordinance shall be reviewed by
26 the planning board and governing body of the municipality at the
27 end of three years subsequent to enactment. This review shall
28 include an analysis of development potential transactions in both
29 the private and public market, an update of current conditions in
30 comparison to the original report prepared pursuant to section 5 of
31 **[this act]** P.L.1989, c.86, and an assessment of the performance
32 goals of the development transfer program including an evaluation
33 of the units constructed with and without the utilization of the
34 development transfer ordinance. A report of findings from this
35 review shall be submitted to the county planning board and, where
36 the sending zone includes agricultural land, the CADB for review
37 and recommendations. Based on this review the municipality shall
38 act to maintain and enhance the value of development transfer
39 potential not yet utilized and, if necessary, amend the infrastructure
40 plan and comprehensive development plan and design standards
41 prepared pursuant to section 5 of **[this act]** P.L.1989, c.86.

42 b. The development transfer ordinance shall be reviewed by the
43 planning board and governing body of the municipality at the end of
44 **[six]** ten years subsequent to enactment. This review shall provide
45 for the examination of the development transfer ordinance to
46 determine whether the program for development transfer and the
47 permitted uses in the sending zone continue to remain economically
48 viable, and shall require an update of the report and plans prepared

1 pursuant to section 5 of **[this act]** P.L.1989, c.86. If at least 30% of
2 the development potential available on the market at market value
3 has not been transferred at the end of this **[six-year]** ten-year
4 period, the municipal governing body shall repeal the development
5 transfer ordinance within 90 days of the end of the **[six-year]** ten-
6 year period unless one of the following is met:

7 (1) the municipality immediately takes action to acquire or
8 provide for the private purchase of the difference between the
9 development potential already transferred and 50% of the total
10 development transfer potential created in the sending zone under the
11 development transfer ordinance;

12 (2) a majority of the property owners in a sending zone who
13 own land from which the development potential has not yet been
14 transferred agree that the development transfer ordinance should
15 remain in effect; or

16 (3) the municipality can demonstrate either future success or can
17 demonstrate that low levels of development transfer activity is due
18 not to ordinance failure but to low levels of development demand in
19 general. This demonstration shall require the concurrence of the
20 county planning board and the Office of State Planning, and shall
21 be the subject of a municipal public hearing conducted prior to a
22 final determination regarding the future viability of the
23 development transfer program.

24 c. Thereafter the development transfer ordinance shall provide
25 for review thereof by the planning board and the governing body of
26 the municipality at least once every **[six]** 10 years in conjunction
27 with the review and update of the master plan of the municipality
28 pursuant to the provisions of section 76 of P.L.1975, c.291
29 (C.40:55D-89). This review shall provide for the examination of
30 the ordinance to determine whether the program and uses permitted
31 in the sending zone continue to be economically viable and shall
32 require an update of the report and plans prepared pursuant to
33 section 5 of **[this act]** P.L.1989, c.86.

34 d. If 60% of the development potential has not been transferred
35 at the end of a 12-year period, the municipal governing body shall
36 repeal the development transfer ordinance within 90 days at the end
37 of the 12-year period unless the municipality meets the standards
38 established pursuant to subsection b. of this section.

39 (cf: P.L.1989, c.86, s.11)

40

41 13. (New section) The Office of State Planning established
42 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), in
43 conjunction with the Division of Local Government Services in the
44 Department of Community Affairs, shall provide technical
45 assistance to municipalities to aid them in adopting timed-growth
46 ordinances authorized pursuant to section 6 of P.L. , c. (C.)
47 (pending before the Legislature as this bill). This technical
48 assistance shall consist of: the preparation and dissemination of

1 model ordinances; the provision of advice and assistance regarding
2 the drafting of timed-growth ordinances; the development of
3 formulas and methods for the calculation of the costs of and the
4 definition of service units; advice relating to the preparation of plan
5 elements and capital improvement programs; and any other
6 assistance that is consistent with the purposes of this act.

7
8 14. This act shall take effect immediately.

9
10
11 STATEMENT

12
13 This bill would authorize municipalities to adopt timed-growth
14 ordinances as a land use planning tool enabling them to pace
15 development in their locale in conjunction with whatever capital
16 improvements are needed to infrastructure to support the
17 development. New development places an undeniable burden on
18 older, and often inadequate infrastructure, such as deteriorating
19 water supply facilities and sewer systems, and inadequate road
20 networks, and also creates a need for new capital expenditures such
21 as schools.

22 A timed-growth ordinance adopted by West Windsor Township
23 in Mercer County was invalidated by the court as being in conflict
24 with the "Municipal Land Use Law," (MLUL), P.L.1975, c.291
25 (C.40:55D-1 et seq.). This bill would authorize a timed-growth
26 ordinance under the MLUL provided that it meets the following
27 criteria:

- 28
- 29 • A municipality must have adopted a master plan and a
30 capital improvement plan. The capital improvement plan
31 required under the bill includes a requirement to look at a
32 broad range of infrastructure such as sewers, water facilities,
33 roads and schools, and the plan must comport with the State
34 Development and Redevelopment Plan adopted pursuant to
35 section 4 of P.L.1985, c.398 (C.52:18A-199).
 - 36 • A timed-growth ordinance adopted pursuant to the bill must
37 include: (1) the number of timed-growth districts and their
38 geographic location and legal boundaries; (2) the quantity of
39 development which will be timed or paced in each district,
40 and the schedule for that timing; (3) a delineation of service
41 areas for each capital improvement whose upgrading or
42 expansion is necessary to support the development in each
43 district; (4) the ability for a developer to accelerate
44 development rights for a project within a district by the
45 payment of the costs associated with the proposed
46 development based on its estimated effect on each service
47 unit; and (5) a schedule which clearly sets forth the amount
48 to be charged for each service unit in the event development
rights are accelerated.

- 1 • A timed-growth ordinance may not impinge on any pending
2 plan for development of affordable housing pursuant to the
3 *Mount Laurel* decisions or the "Fair Housing Act."
- 4 • A timed-growth ordinance may not be applied to an
5 individual wishing to develop a single or two-family
6 residence on his own property and
- 7 • A timed-growth district created by ordinance shall conform
8 as nearly as practicable with the State Development and
9 Redevelopment Plan adopted pursuant to section 4 of
10 P.L.1985, c.398 (C.52:18A-199).
- 11 • A timed-growth ordinance may not be applied retroactively
12 to deny approval to any application for development which
13 had received preliminary approval prior to the adoption of
14 such an ordinance.

15 The delay or prohibition of development within a timed-growth
16 ordinance must be limited in duration to the time remaining before a
17 revision of the master plan is required under P.L.1975, c.291
18 (40:55D-1 et seq.). The bill also extends the revision cycle of the
19 master plan from six to 10 years, as well as setting the length of
20 time for the revision of a capital improvement plan to 10 years.

21 Under the bill any payment received by a municipality for
22 acceleration of development rights shall be transmitted by the
23 municipality to the appropriate entity or entities in proportion to the
24 service unit costs calculated. Monies received by a school district
25 pursuant the bill must be deposited into the appropriate capital
26 reserve or debt service accounts.