

ASSEMBLY, No. 331

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen PASCRELL and ARNONE

1 AN ACT concerning site improvement standards and amending  
2 P.L.1993, c.32.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.1993, c.32 (C.40:55D-40.1) is amended to read  
8 as follows:

9 1. As used in this act:

10 "Board" means the Site Improvement Advisory Board established  
11 by this act;

12 "Commissioner" means the Commissioner of Community Affairs;

13 "Department" means the Department of Community Affairs;

14 "Engineering construction standards" means those technical  
15 standards which govern specifications for the construction of physical  
16 infrastructure in residential developments which shall include, but not  
17 be limited to, thickness of pavement and roadways, and underground  
18 utility construction but shall not include requirements for number or  
19 size of off-street parking spaces, width of streets, location of utilities  
20 or other structures, type of curbing, street grade, signs, street and site  
21 lighting, bikeways, sidewalks, or other requirements relating to the  
22 form, function, aesthetics, character or appearance of residential  
23 developments, and shall not intrude upon or supersede the zoning  
24 power as specified in article 8 of P.L.1975, c.291 (C.40:55D-62  
25 through 40:55D-68.3); and

26 "Site improvement" means any engineering construction work on,  
27 or improvement in connection with, residential subdivision and site  
28 plan development[, and shall be limited to, streets, roads, parking  
29 facilities, sidewalks, drainage structures, and utilities].

30 (cf: P.L.1993, c.32, s.1)

**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       2. Section 2 of P.L.1993, c.32 (C.40:55D-40.2) is amended to read  
2 as follows:

3       2. The Legislature hereby finds and declares that:

4       a. The multiplicity of engineering construction standards for  
5 ~~[subdivisions and]~~ site improvements that currently exists in this State  
6 increases the costs of housing without commensurate gains in the  
7 protection of the public health and safety;

8       b. It is in the public interest to avoid unnecessary cost in the  
9 construction process and uniform ~~[site improvement standards]~~  
10 engineering construction standards for site improvements that are both  
11 sound and cost effective will advance this goal;

12       c. Adoption of uniform ~~[site improvement]~~ engineering  
13 construction standards for site improvements will satisfy the need to  
14 ensure predictability;

15       d. The public interest is best served by having ~~[development]~~  
16 residential subdivision and site plan review based, to the greatest  
17 extent possible, upon sound, ~~[objective site improvement]~~ engineering  
18 construction standards rather than upon ~~[discretionary]~~ more  
19 subjective design standards;

20       e. The goal of streamlining the development approval process by  
21 improving the efficiency of the application process is best served by  
22 the establishment of a uniform set of ~~[technical site improvement]~~  
23 engineering construction standards for site improvement for land  
24 development which ~~[represents]~~ represent the contributions of a  
25 consensus of informed and interested parties and which adequately  
26 addresses their concerns;

27       f. In order to provide the widest possible range of design freedom  
28 and promote diversity, ~~[technical requirements]~~ engineering  
29 construction standards should be ~~[based upon uniform site~~  
30 improvement standards; and

31       g. The policymaking aspects of development review are best  
32 separated from the making of technical determinations] uniform  
33 statewide.

34 (cf: P.L.1993, c.32, s.2)

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36       3. Section 4 of P.L.1993, c.32 (C.40:55D-40.4) is amended to read  
37 as follows:

38       4. a. The board shall, no later than 180 days following the  
39 appointment of its full membership, prepare and submit to the  
40 commissioner recommendations for a range of Statewide ~~[site~~  
41 improvement] engineering construction standards for site  
42 improvements for residential development. ~~[The site improvement~~  
43 standards shall implement the recommendations with respect to streets,  
44 off-street parking, water supply, sanitary sewers and storm water  
45 management of Article Six (with the exhibits appended thereto) of the  
46 January 1987 "Model Subdivision and Site Plan Ordinance" prepared

1 for the department by The Center for Urban Policy Research at  
2 Rutgers, The State University, except to the extent that the  
3 recommendations set forth in the "Model Subdivision and Site Plan  
4 Ordinance" are inconsistent with the requirements of other law;  
5 provided, however, that, in the case of inconsistency between the  
6 "Model Subdivision and Site Plan Ordinance" and the "Municipal Land  
7 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the site  
8 improvement standards recommended by the board shall conform to  
9 the provisions of the "Model Subdivision and Site Plan Ordinance;"and  
10 provided, further, that the] Article Six (with exhibits appended  
11 thereto) of the January 1987 "Model Subdivision and Site Plan  
12 Ordinance" prepared for the department by the Center for Urban  
13 Policy Research at Rutgers, the State University shall be used as a  
14 guide to establishing a range of standards which recognize the  
15 diversity of local soil characteristics and settlement patterns and the  
16 implications of those differences for local construction practices, but  
17 shall not be adopted by the board for uniform statewide application.  
18 The board may in developing its recommendations, replace or modify  
19 any of the specific engineering construction standards for site  
20 improvements set forth in the aforesaid model ordinance in light of any  
21 recommended site improvement standards promulgated under  
22 similarly authoritative auspices of any academic or professional  
23 institution or organization or other commonly accepted standards.

24 In addition to those recommended standards, the board shall  
25 develop, and shall submit with recommendation to the commissioner,  
26 a model application form for use throughout the State , which a  
27 municipality may use, at its discretion. The standards recommended  
28 by the board shall use any terms or concepts defined or referred to in  
29 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)  
30 consistently with their definition or inclusion in that law. Any  
31 definitions included in the standards other than those included in the  
32 "Municipal Land Use Law" shall apply only to the engineering  
33 construction standards adopted pursuant to P.L. c. (C. ) (pending  
34 before the Legislature as this bill) and shall not be applicable to any  
35 other land use ordinances, except at the discretion of the municipality.

36 [At the time the board submits its recommendations for Statewide  
37 site improvement standards and a model Statewide application form,  
38 the board shall submit to the commissioner, the Governor and the  
39 Legislature any recommendations it may deem necessary, in view of  
40 the recommended site improvement standards and the model statewide  
41 application form, for changes in the "Municipal Land Use Law,"  
42 P.L.1975, c.291 (C.40:55D-1 et seq.).]

43 b. The commissioner shall review the recommendations submitted  
44 by the board and, following his review, shall establish, by regulation  
45 adopted pursuant to the "Administrative Procedure Act," P.L.1968,  
46 c.410 (C.52:14B-1 et seq.), a set of Statewide [site improvement

1 standards] engineering construction standards for site improvements  
2 to be followed by municipalities in granting development approval  
3 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) and a standard  
4 application form that [shall] may be used throughout the State. The  
5 commissioner shall promulgate the recommendations of the board with  
6 regard to Statewide [site improvement standards] engineering  
7 construction standards for site improvements without making a change  
8 in any recommended standard unless, in the commissioner's judgment,  
9 a standard would: (1) place an unfair economic burden on some  
10 municipalities or developers relative to others; or (2) result in a danger  
11 to the public health or safety. The commissioner may veto any site  
12 improvement standard on the abovementioned grounds; however, any  
13 veto of the commissioner may be overridden by a two-thirds vote of  
14 the board. The regulations shall be adopted within one year of their  
15 submission by the board to the commissioner.

16 c. A municipality or developer may [seek a waiver of any site  
17 improvement standard adopted by the board in connection with a  
18 specific development if, in the judgment of the municipal engineer or  
19 the developer, to adhere to the standard would jeopardize the public  
20 health and safety. Any] mutually agree on a waiver of any standard in  
21 the range of standards adopted by the board in connection with a  
22 specific development if the reason for the waiver is clearly stated in  
23 writing and justified on engineering grounds, and is so stated on the  
24 plans, drawings and written agreement. When either a municipality  
25 or a developer disagrees on any standard outside the range, an  
26 application for a waiver shall be submitted in writing to the  
27 commissioner, who shall direct the application to a technical  
28 subcommittee, as described below, if the commissioner deems the  
29 application to be justified according to the standards set forth in this  
30 subsection. The technical subcommittee shall consist of those  
31 representatives set forth in paragraphs (1), (2) and (6) of subsection  
32 a. of section 3 of [this act] P.L.1993, c.32 (C.40:55D-40.3) appointed  
33 by the commissioner to serve on the Site Improvement Advisory  
34 Board. Any decision of the technical subcommittee shall be adopted  
35 by resolution explaining the subcommittee's rationale for granting or  
36 denying the waiver. The subcommittee shall render its decision within  
37 30 days of the commissioner's determination that the application is  
38 justified. Any decision of the technical subcommittee may be appealed  
39 to the entire board; however, the board shall render any final decision  
40 of an appeal within 10 days of the hearing on the appeal and the  
41 decision of the full board shall be final. The waiver process shall not  
42 extend the time guidelines which constrain development applications  
43 which are set forth in the "Municipal Land Use Law," P.L.1975, c.291  
44 (C.40:55D-1 et seq.).

45 d. The board shall annually review the range of regulations adopted  
46 pursuant to subsection b. of this section, and shall recommend to the

1 commissioner any changes in [those] the range of regulations which  
2 the board deems necessary [based on recommended site improvement  
3 standards promulgated under the authoritative auspices of any  
4 academic or professional institution or organization]. Any changes  
5 made in the regulations pursuant to this subsection shall be made  
6 according to the same procedure and shall be subject to the same  
7 waiver provisions as those set forth in subsections a., b. and c. of this  
8 section.

9 (cf: P.L.1993, c.32, s.4)

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11 4. Section 5 of P.L.1993, c.32 (C.40:55D-40.5) is amended to read  
12 as follows:

13 5. Notwithstanding any provision to the contrary of the "Municipal  
14 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the standards  
15 set forth in the regulations adopted pursuant to subsection b. of  
16 section 4 of [this act] P.L.1993, c.32 (C.40:55D-40.4) shall supersede  
17 any [site improvement standards] engineering construction standard  
18 for site improvements as defined in section 1 of P.L.1993, c.32  
19 (C.40:55D-40.1) for the purposes of P.L.1993, c.32 (C.40:55D-40.1  
20 et seq.) incorporated within the development ordinances of any  
21 municipality, as provided hereunder. The regulations adopted by the  
22 commissioner pursuant to subsection b. of section 4 of [this act]  
23 P.L.1993, c.32 (C.40:55D-40.4) and any subsequent amendments  
24 thereto shall take effect 180 days following the adoption of those  
25 regulations and any municipal ordinances in effect on that date shall be  
26 deemed to have been repealed and have no further force or effect;  
27 provided, however, that the development ordinances of any  
28 municipality shall continue to govern any project which has received  
29 preliminary approval on or before the effective date of any [site  
30 improvement standards] engineering construction standard for site  
31 improvements or amendments adopted thereto.

32 (cf: P.L.1993, c.32, s.5)

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34 5. Section 7 of P.L.1993, c.32 (C.40:55D-40.7) is amended to read  
35 as follows:

36 7. a. Nothing in this act shall be construed to modify the  
37 provisions of the "Pinelands Protection Act," P.L.1979, c.111  
38 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto  
39 and section 502 of the "National Parks and Recreation Act of 1978"  
40 (Pub.L 95-625).

41 b. Nothing in this act shall be construed to prohibit, preempt or in  
42 any way affect the exercise of any authority by the State or any county  
43 government with respect to engineering construction standards for site

1 improvements conferred by any other State law or regulation  
2 promulgated thereunder.

3 (cf: P.L.1993, c.32, s.7)

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5 6. This act shall take effect immediately.

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#### STATEMENT

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10 This bill makes various changes to P.L.1993, c.32 (C.40:55D-40.1  
11 et seq.), which established a Site Improvement Advisory Board and  
12 required the adoption of Statewide site improvement standards.

13 Specifically, this bill would limit the applicability of those standards  
14 to engineering construction specifications as they apply to the physical  
15 infrastructure of residential developments. The bill would require that  
16 the recommended standards be formulated by the board as a range of  
17 standards which reflect the diversity of the State's geography, soil  
18 types and settlement patterns. The bill also clarifies that the model  
19 application form which the board develops may be used by  
20 municipalities, but it is not mandatory that it be used statewide.

21 The bill requires that the terms and concepts used by the board in  
22 the recommended standards be consistent with their usage in the  
23 "Municipal Land Use Law."

24 The bill permits a municipality and a developer mutually to agree on  
25 a waiver of any standard if the nature of the waiver is clearly stated in  
26 writing and justified on an engineering basis. Under current law, either  
27 a municipality or a developer may seek a waiver of any site  
28 improvement standard but only if adhering to the standard would  
29 jeopardize the public health and safety.

30 The bill amends P.L.1993, c.32 (C.40:55D-40.1 et seq.) to reflect  
31 the narrowing of the law's focus to engineering construction standards.

32 This bill is intended, in part, to respond to a recent Attorney  
33 General's letter opinion which found that the zoning authority of a  
34 municipality does not limit the authority of the Site Improvement  
35 Advisory Board and the Commissioner of Community Affairs to  
36 establish specific uniform site improvement standards as required  
37 under P.L.1993, c.32 (C.40:55D-40.1 et seq.).

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42 Narrows focus of uniform site improvement guidelines to engineering  
43 construction standards.