

ASSEMBLY, No. 543

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman TURNER

1 AN ACT authorizing the assessment of development impact fees,
2 amending and supplementing P.L.1975, c.291 and amending
3 P.L.1975, c.217.

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 through 8, 10, 12 and 13 shall be
9 known and may be cited as the "Municipal Development Impact Fee
10 Authorization Act."

11

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

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

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

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

29 d. It is therefore a valid public policy of the State and in the public
30 interest that municipalities be enabled to levy impact fees on new
31 development in order to make those improvements in the local
32 infrastructure which are necessary to accommodate the new

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 development.

2

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

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

7 The term "shall" indicates a mandatory requirement, and the term
8 "may" indicates a permissive action.

9 "Administrative officer" means the clerk of the municipality, unless
10 a different municipal official or officials are designated by ordinance
11 or statute.

12 "Applicant" means a developer submitting an application for
13 development.

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

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

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

26 "Building" means a combination of materials to form a construction
27 adapted to permanent, temporary, or continuous occupancy and having
28 a roof.

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

31 "Capital improvement" means [a governmental acquisition of real
32 property or major construction project] any facility for the provision
33 of public services with a life expectancy of three or more years, owned
34 and operated by or on behalf of the State or a political subdivision
35 thereof.

36 "Circulation" means systems, structures and physical improvements
37 for the movement of people, goods, water, air, sewage or power by
38 such means as streets, highways, railways, waterways, towers,
39 airways, pipes and conduits, and the handling of people and goods by
40 such means as terminals, stations, warehouses, and other storage
41 buildings or transshipment points.

42 "Common open space" means an open space area within or related
43 to a site designated as a development, and designed and intended for
44 the use or enjoyment of residents and owners of the development.
45 Common open space may contain such complementary structures and
46 improvements as are necessary and appropriate for the use or

1 enjoyment of residents and owners of the development.

2 "Conditional use" means a use permitted in a particular zoning
3 district only upon a showing that such use in a specified location will
4 comply with the conditions and standards for the location or operation
5 of such use as contained in the zoning ordinance, and upon the
6 issuance of an authorization therefor by the planning board.

7 "Conventional" means development other than planned
8 development.

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

14 "County planning board" means the county planning board, as
15 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
16 in which the land or development is located.

17 (cf: P.L.1991, c.412, s.1)

18

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

21 3.1. "Days" means calendar days.

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

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

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

34 "Development regulation" means a zoning ordinance, subdivision
35 ordinance, site plan ordinance, official map ordinance or other
36 municipal regulation of the use and development of land, or
37 amendment thereto adopted and filed pursuant to this act.

38 "Drainage" means the removal of surface water or groundwater
39 from land by drains, grading or other means and includes control of
40 runoff during and after construction or development to minimize
41 erosion and sedimentation, to assure the adequacy of existing and
42 proposed culverts and bridges, to induce water recharge into the
43 ground where practical, to lessen nonpoint pollution, to maintain the
44 integrity of stream channels for their biological functions as well as for
45 drainage, and the means necessary for water supply preservation or
46 prevention or alleviation of flooding.

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

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

5 "Facility expansion" means the expansion of the capacity of an
6 existing capital improvement in order that the improvement may serve
7 new development.

8 "Final approval" means the official action of the planning board
9 taken on a preliminarily approved major subdivision or site plan, after
10 all conditions, engineering plans and other requirements have been
11 completed or fulfilled and the required improvements have been
12 installed or guarantees properly posted for their completion, or
13 approval conditioned upon the posting of such guarantees.

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

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

19 "Governing body" means the chief legislative body of the
20 municipality. In municipalities having a board of public works,
21 "governing body" means such board.

22 "Historic district" means one or more historic sites and intervening
23 or surrounding property significantly affecting or affected by the
24 quality and character of the historic site or sites.

25 "Historic site" means any real property, man-made structure,
26 natural object or configuration or any portion or group of the
27 foregoing of historical, archeological, cultural, scenic or architectural
28 significance.

29 "Impact fee" means cash or in-kind payments required to be paid by
30 a developer as a condition for approval of a subdivision or site plan for
31 the developer's proportional share of the cost of providing new or
32 expanded reasonable and necessary public improvements located
33 outside the property limits of the subdivision or development but
34 reasonably related to the subdivision or development based upon the
35 need for the improvement created by, and the benefits conferred upon,
36 the subdivision or development.

37 "Individual unit of development" means a dwelling unit in the case
38 of a residential development, a square foot in the case of a
39 non-residential development or any other standard employed by a
40 municipality for different categories of development as a basis upon
41 which to establish a service unit.

42 "Interested party" means:

43 (a) in a criminal or quasi-criminal proceeding, any citizen of the
44 State of New Jersey; and (b) in the case of a civil proceeding in any
45 court or in an administrative proceeding before a municipal agency,
46 any person, whether residing within or without the municipality, whose

1 right to use, acquire, or enjoy property is or may be affected by any
2 action taken under this act, or whose rights to use, acquire, or enjoy
3 property under this act, or under any other law of this State or of the
4 United States have been denied, violated or infringed by an action or
5 a failure to act under this act.

6 "Land" includes improvements and fixtures on, above or below the
7 surface.

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

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

19 (cf: P.L.1991, c.412, s.2)

20

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

23 3.4 "Sedimentation" means the deposition of soil that has been
24 transported from its site of origin by water, ice, wind, gravity or other
25 natural means as a product of erosion.

26 "Service area" means that area to be served by the capital
27 improvement or facility expansion as designated in the capital
28 improvement program adopted by a municipality under section 11 of
29 P.L. , c. (C.) (pending before the Legislature as this bill).

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

35 "Site plan" means a development plan of one or more lots on which
36 is shown (1) the existing and proposed conditions of the lot, including
37 but not necessarily limited to topography, vegetation, drainage, flood
38 plains, marshes and waterways, (2) the location of all existing and
39 proposed buildings, drives, parking spaces, walkways, means of
40 ingress and egress, drainage facilities, utility services, landscaping,
41 structures and signs, lighting, screening devices, and (3) any other
42 information that may be reasonably required in order to make an
43 informed determination pursuant to an ordinance requiring review and
44 approval of site plans by the planning board adopted pursuant to
45 article 6 of [this act] P.L.1975, c.291 (C.40:55D-1 et seq.).

46 "Standards of performance" means standards (1) adopted by

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

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

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

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

40 "Transcript" means a typed or printed verbatim record of the
41 proceedings or reproduction thereof.

42 "Variance" means permission to depart from the literal requirements
43 of a zoning ordinance pursuant to section 47 [and] , subsection
44 [29.2b., 57c. and 57d.]b. of section 29.2, and subsections c. and d. of
45 section 57 of [this act] P.L.1975, c.291 (C.40:55D-60, 40:55-40 and
46 40:55-70).

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

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

11

12 6. (New section) a. Any municipality which has adopted a master
13 plan pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and a
14 capital improvement plan pursuant to section 10 of P.L. , c.
15 (C.) (pending before the Legislature as this bill) may adopt an
16 ordinance establishing an impact fee.

17 Any impact fee ordinance adopted pursuant to this section shall
18 include detailed standards and guidelines regarding: (1) the definition
19 of a service unit, including specific measures of consumption, use,
20 generation or discharge attributable to particular land uses, densities
21 and characteristics of development; and (2) the specific purposes for
22 which the impact fee revenues may be expended.

23 An impact fee ordinance shall also include a delineation of service
24 areas for each capital improvement whose upgrading or expansion is
25 to be funded out of impact fee revenues and a fee schedule which
26 clearly sets forth the amount of the fee to be charged for each service
27 unit.

28 b. An impact fee may be imposed by a municipality under this act
29 in order to generate revenue for funding or recouping the costs of new
30 capital improvements or facility expansions necessitated by new
31 development. An impact fee authorized under this section may include
32 contributions for: any transportation improvement necessitated by a
33 new development in a county which is not covered by a transportation
34 development district created pursuant to the "New Jersey
35 Transportation Development District Act of 1989," P.L.1989, c.100
36 (C.27:1C-1 et al.); water treatment and distribution; wastewater
37 treatment and sewerage; flood control and stormwater management;
38 municipal parks and recreation facilities; public safety and related
39 facilities; and educational facilities; provided, however, that a
40 municipality may levy an impact fee for any of the above areas only if
41 it has previously adopted the appropriate plan element or elements set
42 forth in paragraphs (3) through (12) of subsection b. of section 19 of
43 P.L.1975, c.291 (C.40:55D-28) in order to justify the projections of
44 need for the capital improvement or facility expansion outlined in the
45 capital improvement program; and provided further that any impact fee
46 imposed to finance educational facilities be based upon a facilities

1 survey prepared by the school district pursuant to section 11 of
2 P.L.1975, c.212 (C.18A:7A-11).

3 c. No impact fee shall be assessed against any residential
4 development in which at least 20% of the units therein are made
5 affordable to persons of low or moderate income, as defined under
6 P.L.1985, c.222 (C.52:27D-301 et al.).

7 d. An impact fee levied by a municipality may be used to fund
8 amortized or lump-sum charges incurred by the municipality, capital
9 recovery fees and contributions in aid of construction. Projected
10 interest charges and other finance costs may be included in
11 determining the amount of impact fees only if the impact fees are used
12 for the payment of principal and interest on obligations issued by or on
13 behalf of the municipality to finance the capital improvements or
14 facility expansions identified in the capital improvement program
15 adopted pursuant to section 10 of P.L. , c. (C.) (pending
16 before the Legislature as this bill) and are not used to reimburse bond
17 funds expended for facilities not identified in the capital improvement
18 program or for any other purpose.

19 Any interest or other charges incurred by, or to be incurred by, the
20 municipality in constructing any capital improvement or facility
21 expansion prior to receiving payment of any impact fee assessed
22 against a developer may, at the discretion of the municipality, be
23 charged to the developer at the final payment stage as an add-on
24 charge or factored into the calculation of the impact fee from the
25 outset.

26 e. An ordinance adopted in accordance with this act shall provide
27 for the assessment of impact fees at the time of preliminary
28 development approval and payment of those fees according to the
29 following schedule: 25% prior to receiving final development
30 approval; 25% prior to applying for a construction permit pursuant to
31 section 12 of P.L.1975, c.217 (C.52:27D-130); and 50% prior to
32 applying for the first certificate of occupancy pursuant to section 15
33 of P.L.1975, c.217 (C.52:27D-133).

34
35 7. (New section) a. No impact fee imposed by a municipality shall
36 be in an amount exceeding the current reasonable cost of constructing
37 the capital improvement or facility expansion for which the fee is being
38 assessed. Any impact fee revenue that is not applied immediately to
39 the purpose for which it was collected shall be placed in an
40 interest-bearing account in a banking institution in this State.

41 Any impact fee revenue collected shall be expended within the
42 period anticipated in the ordinance enacting the impact fee, but in no
43 case shall the municipality maintain unexpended impact fees for more
44 than eight years after the date of collection of the final payment for
45 any development, except as provided in section 8 of P.L. , c.
46 (C.) (pending before the Legislature as this bill), unless

1 construction has already begun on the capital improvement or facility
2 expansion for which the impact fees were collected.

3 b. Any impact fee revenue not expended, as provided in subsection
4 a. of this section, shall be returned, with interest, to the person who
5 made payment or to the heirs, successors or assigns of such person
6 upon the request of that person or his heirs, successor or assigns.

7

8 8. (New section) a. Notwithstanding the provisions of subsection
9 a. of section 7 of P.L. , c. (C.) (pending before the Legislature
10 as this bill) to the contrary, a municipality may bond for capital
11 improvements within service areas and collect impact fees to fund debt
12 service payments for a period in excess of eight years after the date of
13 collection of the final payment.

14 b. A developer and the municipal governing body, upon mutual
15 agreement, may pro rate impact fees for debt service payments within
16 service areas. In the event that debt service payments are pro rated,
17 payments shall be collected as the developments are connected into the
18 capital improvements for which the impact fees have been imposed.

19 c. With the consent of the municipal governing body, a developer
20 may construct required capital improvements in lieu of paying all or
21 any portion of the impact fee otherwise assessed against the developer.

22 d. In the event that a developer or his successor experiences
23 unforeseen delays in completion of the development which is the
24 subject of an impact fee assessment, the eight year limit on municipal
25 expenditure of the impact fee moneys may be extended for the length
26 of the delay, with the approval of the municipal governing body.

27

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

30 20. a. The governing body of any municipality which does not
31 authorize the preparation of a program of municipal capital
32 improvements for the purposes of adopting an impact fee ordinance
33 pursuant to section 6 of P.L. , c. (C.) (pending before the
34 Legislature as this bill) may authorize the planning board from time to
35 time to prepare a program of municipal capital improvement projects
36 projected over a term of at least six years, and amendments thereto.
37 Such program may encompass major projects being currently
38 undertaken or future projects to be undertaken, with Federal, State,
39 county and other public funds or under Federal, State or county
40 supervision. The first year of such program shall, upon adoption by
41 the governing body, constitute the capital budget of the municipality
42 as required by N.J.S.40A:4-43 et seq. The program shall classify
43 projects in regard to the urgency and need for realization, and shall
44 recommend a time sequence for their implementation. The program
45 may also contain the estimated cost of each project and indicate
46 probable operating and maintenance costs and probable revenues, if

1 any, as well as existing sources of funds or the need for additional
2 sources of funds for the implementation and operation of each project.
3 The program shall, as far as possible, be based on existing information
4 in the possession of the departments and agencies of the municipality
5 and shall take into account public facility needs indicated by the
6 prospective development shown in the master plan of the municipality
7 or as permitted by other municipal land use controls.

8 In preparing the program, the planning board shall confer, in a
9 manner deemed appropriate by the board, with the mayor, the chief
10 fiscal officer, other municipal officials and agencies, and the school
11 board or boards.

12 Any such program shall include an estimate of the displacement of
13 persons and establishments caused by each recommended project.

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

22 (cf: P.L.1975, c.291, s.20)

23

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

38 The program shall include:

39 a. a description of existing capital improvements, a map or maps
40 depicting the service area of each improvement and the costs to
41 improve or replace those improvements in order to meet existing or
42 prospective demand or stricter safety, environmental or regulatory
43 standards;

44 b. an analysis of total capacity, level of current usage and
45 anticipated usage of existing capital improvements based on final
46 approvals already granted pursuant to P.L.1975, c.291 (C.40:55D-1

1 et seq.) or patterns of current usage;

2 c. a description of future need for capital improvements and facility
3 expansions based on the master plan adopted pursuant to section 19
4 of P.L.1975, c.291 (C.40:55D-28);

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

7 e. a schedule establishing a specific level of quantity of use,
8 consumption, generation or discharge of a service unit for each
9 category of capital improvement or expansion.

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

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

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

28 In preparing the program, the planning board shall confer, in a
29 manner deemed appropriate by the board, with the mayor, the chief
30 financial officer, other municipal officials and agencies, and the school
31 board or boards.

32 Any program shall include an estimate of the displacement of
33 persons and establishments caused by each recommended project.

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

41

42 11. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to
43 read as follows:

44 6. a. The municipal agency shall hold a hearing on each application
45 for development, [or] adoption, revision or amendment of the master
46 plan and capital improvement program adopted pursuant to section 10

1 of P.L. , c. (C.) (pending before the Legislature as this bill).

2 b. The municipal agency shall make the rules governing such
3 hearings. Any maps and documents for which approval is sought at
4 hearing shall be on file and available for public inspection at least 10
5 days before the date of the hearing, during normal business hours in
6 the office of the administrative officer. The applicant may produce
7 other documents, records, or testimony at the hearing to substantiate
8 or clarify or supplement the previously filed maps and documents.

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

15 d. The testimony of all witnesses relating to an application for
16 development shall be taken under oath or affirmation by the presiding
17 officer, and the right of cross-examination shall be permitted to all
18 interested parties through their attorneys, if represented, or directly,
19 if not represented, subject to the discretion of the presiding officer and
20 to reasonable limitations as to time and number of witnesses.

21 e. Technical rules of evidence shall not be applicable to the
22 hearing, but the agency may exclude irrelevant, immaterial or unduly
23 repetitious evidence.

24 f. The municipal agency shall provide for the verbatim recording of
25 the proceedings by either stenographer, mechanical or electronic
26 means. The municipal agency shall furnish a transcript, or duplicate
27 recording in lieu thereof, on request to any interested party at his
28 expense; provided that the governing body may provide by ordinance
29 for the municipality to assume the expense of any transcripts necessary
30 for appeal to the governing body, pursuant to section 8 of [this act]
31 P.L.1975, c.291 (C.40:55D-17), of decisions by the zoning board of
32 adjustment pursuant to subsection [57d.]d. of section 57 of [this act]
33 P.L.1975, c.291 (C.40:55D-70), up to a maximum amount as specified
34 by the ordinance.

35 The municipal agency, in furnishing a transcript of the proceedings
36 to an interested party at his expense, shall not charge such interested
37 party more than the maximum permitted in N.J.S.[2A:11-15] 2B:7-4.
38 Said transcript shall be certified in writing by the transcriber to be
39 accurate.

40 g. The municipal agency shall include findings of fact and
41 conclusions based thereon in each decision on any application for
42 development and shall reduce the decision to writing. The municipal
43 agency shall provide the findings and conclusions through:

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

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

24 h. A copy of the decision shall be mailed by the municipal agency
25 within 10 days of the date of decision to the applicant or, if
26 represented, then to his attorney, without separate charge, and to all
27 who request a copy of the decision, for a reasonable fee. A copy of
28 the decision shall also be filed by the municipal agency in the office of
29 the administrative officer. The administrative officer shall make a
30 copy of such filed decision available to any interested party for a
31 reasonable fee and available for public inspection at his office during
32 reasonable hours.

33 i. A brief notice of the decision shall be published in the official
34 newspaper of the municipality, if there be one, or in a newspaper of
35 general circulation in the municipality. Such publication shall be
36 arranged by the applicant unless a particular municipal officer is so
37 designated by ordinance; provided that nothing contained in this act
38 shall be construed as preventing the applicant from arranging such
39 publication if he so desires. The municipality may make a reasonable
40 charge for its publication. The period of time in which an appeal of
41 the decision may be made shall run from the first publication of the
42 decision, whether arranged by the municipality or the applicant.
43 (cf: P.L.1984, c.20, s.4)

44

45 12. (New section) a. The governing bodies of two or more
46 municipalities may, by substantially similar ordinances duly adopted by

1 each governing body within six calendar months after the adoption of
2 the first such ordinance after notice and hearing as herein required,
3 enter into a joint agreement providing for the assessment of impact
4 fees for development impacts which are generated in one municipality
5 by a development situated in another municipality which is a party to
6 the agreement, as provided hereunder.

7 b. The ordinance shall follow the standards and guidelines set forth
8 in sections 6 through 8 of P.L. , c. (C.) (pending before the
9 Legislature as this bill). The municipalities which are a party to the
10 agreement may jointly impose an impact fee for any or all of the
11 expenditure areas set forth in subsection b. of section 6 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill), so long as
13 the rationale for the impact fee to be administered across municipal
14 lines is appropriately set forth in the capital improvement plans of the
15 municipalities which are a party to the agreement and is supported by
16 the provisions of their respective master plans.

17 The ordinance shall also set forth the administrative process
18 through which impact fees are to be jointly assessed and collected.

19

20 13. (New section) If a developer pays the amount determined by
21 a municipality as his impact fee under protest, he shall institute legal
22 action within 60 days of the payment in order to preserve the right to
23 a judicial determination whether the required payment violates the
24 standards of this act.

25

26 14. Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to
27 read as follows:

28 12. Except as otherwise provided by this act or in the code, before
29 construction or alteration of any building or structure, the owner, or
30 his agent, engineer or architect, shall submit an application in writing,
31 including signed and sealed drawings and specifications, to the
32 enforcing agency as defined in this act. The application shall be in
33 accordance with regulations established by the commissioner and on
34 a form prescribed by the commissioner and shall be accompanied by
35 payment of the fee to be established by the municipal governing body
36 by ordinance in accordance with standards established by the
37 commissioner. In addition, if appropriate, the application shall include
38 proof, by the owner, that 25% of the amount assessed as an impact fee
39 pursuant to section 6 of P.L. , c. (C.)(pending before the
40 Legislature as this bill) was paid to the municipality in which the
41 structure is situated, prior to receiving final development approval
42 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) and that another
43 25% of the total was paid to the appropriate municipality prior to
44 receiving a construction permit. The application for a construction
45 permit shall be filed with the enforcing agency and shall be a public
46 record; and no application for a construction permit shall be removed

1 from the custody of the enforcing agency after a construction permit
2 has been issued. Nothing contained in this paragraph shall be
3 interpreted as preventing the imposition of requirements in the code,
4 for additional permits for particular kinds of work, including but not
5 limited to plumbing, electrical, elevator, fire prevention equipment or
6 boiler installation or repair work, or in other defined situations.

7 No permit shall be issued for a public school facility unless the final
8 plans and specifications have been first approved by the Bureau of
9 Facility Planning Services in the Department of Education or a
10 municipal code official who is appropriately licensed by the
11 Commissioner of Community Affairs for the type and level of plans
12 being reviewed. Approval by the Bureau of Facility Planning Services
13 in the Department of Education shall only be required when a review
14 for educational adequacy is necessary. Requirements determining
15 when a review for educational adequacy is necessary shall be
16 established jointly by the Department of Community Affairs and the
17 Department of Education. The standards shall thereafter be adopted
18 as part of the Uniform Construction Code regulations by the
19 Department of Community Affairs. After the final plans and
20 specifications have been approved for educational adequacy by the
21 Bureau of Facility Planning Services in the Department of Education,
22 a local board of education may submit the final plans and specifications
23 for code approval to either the Bureau of Facility Planning Services in
24 the Department of Education or a municipal code official who is
25 appropriately licensed by the Commissioner of Community Affairs for
26 the type and level of plans being reviewed. The Bureau of Facility
27 Planning Services in the Department of Education when approving
28 final plans and specifications shall be responsible for insuring that the
29 final plans and specifications conform to the requirements of the code
30 as well as for insuring that they provide for an educationally adequate
31 facility. In carrying out its responsibility pursuant to the provisions of
32 this section the Department of Education shall employ persons licensed
33 by the Commissioner of Community Affairs for the type and level of
34 plans being reviewed.

35 (cf: P.L.1990, c.23, s.3)

36

37 15. Section 15 of P.L.1975, c.217 (C.52:27D-133) is amended to
38 read as follows:

39 15. No building or structure hereafter constructed shall be used or
40 occupied in whole or in part until a certificate of occupancy shall have
41 been issued by the enforcing agency. No building or structure
42 hereafter altered, in whole or in part, shall be used or occupied until
43 such a certificate has been issued, except that any use or occupancy in
44 an already existing building or structure that was not discontinued
45 during its alteration may be continued in the preexisting structure for
46 30 days after the completion of the alteration without the issuance of

1 a certificate of occupancy. A certificate of occupancy shall be issued
2 by the enforcing agency when all of the work covered by a
3 construction permit shall have been completed in accordance with the
4 permit, the code, and other applicable laws and ordinances and if
5 appropriate upon, proof that the remaining 50% of the impact fee
6 imposed pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill) has been paid to the appropriate municipality
8 by the owner. In the case of any new home subject to sales surcharge
9 pursuant to P.L.1991, c.202 (C.46:3B-13 et al.) a certificate of
10 occupancy shall not be issued except after presentation of a receipt, or
11 verified duplicate thereof, from the Department of Community Affairs
12 evidencing the payment of the surcharge. On request of a holder of a
13 construction permit, the appropriate enforcing agency may issue a
14 temporary certificate of occupancy for a building or structure, or part
15 thereof, before the entire work covered by the construction permit has
16 been completed, if the part or parts of the building or structure to be
17 covered by the certificate may be occupied prior to completion of all
18 work in accordance with the permit, the code, and other applicable
19 laws and ordinances, without endangering the health and safety of the
20 occupants or users. When a building or structure is entitled thereto,
21 the enforcing agency shall issue a certificate of occupancy within 10
22 business days after receipt of a written application therefor in
23 accordance with regulations established by the commissioner on a form
24 prescribed by the commissioner accompanied by payment of a fee to
25 be established by the municipal governing body by ordinance in
26 accordance with standards established by the commissioner. The
27 certificate of occupancy shall certify that the building or structure has
28 been constructed in accordance with the provisions of the construction
29 permit, the code, and other applicable laws and ordinances.

30 (cf: P.L.1991, c.202, s.8)

31

32 16. (New section) The Commissioner of Community Affairs shall
33 provide technical assistance to municipalities to aid them in adopting
34 impact fee ordinances authorized pursuant to section 6 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill). This
36 technical assistance shall consist of: the preparation and dissemination
37 of model ordinances; the provision of advice and assistance regarding
38 the drafting of impact fee ordinances; the development of formulas and
39 methods for the calculation of impact fees, including the definition of
40 service units; the establishment of fee guidelines; advice relating to the
41 preparation of plan elements and capital improvement programs
42 related to impact fee uses; and any other assistance that is consistent
43 with the purposes of this act.

44

45 17. This act shall take effect immediately.

1 STATEMENT

2

3

4 This bill would allow municipalities to impose an impact fee on
5 developers under certain circumstances.

6 A municipality which imposes an impact fee must do so by an
7 ordinance which sets forth detailed standards and guidelines regarding
8 the definition of a service unit and the specific purposes for which the
9 impact fee revenues may be expended. The impact fee ordinance shall
10 also contain a delineation of service areas for each capital
11 improvement and a fee schedule.

12 Municipalities may impose an impact fee to cover a broad range of
13 expenditure areas, including transportation, water treatment and
14 distribution, wastewater treatment and sewerage, flood control and
15 stormwater management, and educational facilities. A municipality
16 may adopt such an impact fee ordinance only if it has previously
17 adopted a capital improvement program. The capital improvement
18 program referred to here is more detailed than that which is currently
19 authorized under section 20 of the "Municipal Land Use Law,"
20 P.L.1975, c.291 (C.40:55D-29). An impact fee imposed to finance
21 educational facilities shall be based upon a facilities survey prepared
22 by the school district pursuant to section 11 of P.L.1975, c.212
23 (C.18A:7A-11).

24 The municipal capital improvement program shall include: a
25 description of existing capital improvements in the service area; an
26 analysis of total capacity, current and projected usage of existing
27 improvements; a description of the future need for such improvements;
28 and a schedule of use for each category of capital improvement or
29 expansion.

30 Municipalities which choose not to implement an impact fee
31 ordinance under this bill may continue to prepare the less
32 comprehensive capital improvement program currently authorized
33 under the "Municipal Land Use Law." Similarly, those municipalities
34 may continue to levy a fee for off-tract improvements authorized under
35 section 30 of P.L.1975, c.291 (C.40:55D-42).

36 The bill allows municipalities the option of entering into
37 inter-municipal agreements providing for the assessment of impact
38 fees for development impacts which are generated in one municipality
39 by a development situated in another municipality which is a party to
40 the agreement.

41 The bill sets forth terms and conditions under which municipalities
42 may assess and hold onto impact fee revenues. Fees shall be assessed
43 at the preliminary approval stage of a development application and
44 shall be paid, in stages, throughout the development process.
45 Municipalities are authorized to charge developers for interest or other
46 charges incurred in cases where a local unit must provide the
infrastructure which created the demand for the impact fee prior to

1 receiving full payment from the developer.

2 Impact fees may be used only for the purposes for which they were
3 assessed and collected, and unobligated funds may be maintained for
4 eight years after collection of the final installment. With some
5 exceptions which are mutually acceptable to the local government and
6 the developer, fees may be maintained for a longer period.

7

8

9

10

11 Authorizes assessment of development impact fees by municipalities.