

SENATE, No. 609

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Senator SCHLUTER

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
9 be 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
33 development.

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.

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

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

5 The term "shall" indicates a mandatory requirement, and the term
6 "may" indicates a permissive action.

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

10 "Applicant" means a developer submitting an application for
11 development.

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

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

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

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

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

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

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

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

46 "Conditional use" means a use permitted in a particular zoning

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

5 "Conventional" means development other than planned
6 development.

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

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

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

16

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

19 3.1. "Days" means calendar days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 "Interested party" means:

41 (a) in a criminal or quasi-criminal proceeding, any citizen of the
42 State of New Jersey; and (b) in the case of a civil proceeding in any
43 court or in an administrative proceeding before a municipal agency,
44 any person, whether residing within or without the municipality, whose
45 right to use, acquire, or enjoy property is or may be affected by any
46 action taken under this act, or whose rights to use, acquire, or enjoy

1 property under this act, or under any other law of this State or of the
2 United States have been denied, violated or infringed by an action or
3 a failure to act under this act.

4 "Land" includes improvements and fixtures on, above or below the
5 surface.

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

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

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

18

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

21 3.4 "Sedimentation" means the deposition of soil that has been
22 transported from its site of origin by water, ice, wind, gravity or other
23 natural means as a product of erosion.

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

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

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

44 "Standards of performance" means standards (1) adopted by
45 ordinance pursuant to subsection [52d] d. of section 52 of P.L.1975,
46 c.291 (C.40:55D-65) regulating noise levels, glare, earthborne or sonic

1 vibrations, heat, electronic or atomic radiation, noxious odors, toxic
2 matters, explosive and inflammable matters, smoke and airborne
3 particles, waste discharge, screening of unsightly objects or conditions
4 and such other similar matters as may be reasonably required by the
5 municipality or (2) required by applicable Federal or State laws or
6 municipal ordinances.

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

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

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

38 "Transcript" means a typed or printed verbatim record of the
39 proceedings or reproduction thereof.

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

45 "Zoning permit" means a document signed by the administrative
46 officer (1) which is required by ordinance as a condition precedent to

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

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

9

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

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

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

26 b. An impact fee may be imposed by a municipality under this act
27 in order to generate revenue for funding or recouping the costs of new
28 capital improvements or facility expansions necessitated by new
29 development. Improvements and expansions for which an impact fee
30 is to be imposed shall bear a reasonable relationship to needs created
31 by the new development. An impact fee authorized under this section
32 may include contributions for: any transportation improvement
33 necessitated by a new development in a county which is not covered
34 by a transportation development district created pursuant to the "New
35 Jersey Transportation Development District Act of 1989," P.L.1989,
36 c.100 (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 development's proportional share of the
37 current reasonable cost of constructing the capital improvement or
38 facility expansion for which the fee is being assessed. Any impact fee
39 revenue that is not applied immediately to the purpose for which it was
40 collected shall be deposited in a banking institution or savings and loan
41 association in this State insured by an agency of the federal
42 government, or in any other fund or depository approved for such
43 deposits by the State, in a special infrastructure trust fund bearing
44 interest at minimum rate currently paid by the institution or depository
45 on time or savings deposits.

46 Any impact fee revenue collected shall be expended within the

1 period anticipated in the ordinance enacting the impact fee, but in no
2 case shall the municipality maintain unexpended impact fees for more
3 than eight years after the date of collection of the final payment for
4 any development, except as provided in section 8 of P.L. , c.
5 (C.) (pending before the Legislature as this bill), unless
6 construction has already begun on the capital improvement or facility
7 expansion for which the impact fees were collected.

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

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

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

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

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

32
33 9. Section 20 of P.L.1975, c.291 (C.40:55D-29) is amended to
34 read as follows:

35 20. a. The governing body of any municipality which does not
36 authorize the preparation of a program of municipal capital
37 improvements for the purposes of adopting an impact fee ordinance
38 pursuant to section 6 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) may authorize the planning board from time to
40 time to prepare a program of municipal capital improvement projects
41 projected over a term of at least six years, and amendments thereto.
42 Such program may encompass major projects being currently
43 undertaken or future projects to be undertaken, with Federal, State,
44 county and other public funds or under Federal, State or county
45 supervision. The first year of such program shall, upon adoption by
46 the governing body, constitute the capital budget of the municipality

1 as required by N.J.S.40A:4-43 et seq. The program shall classify
2 projects in regard to the urgency and need for realization, and shall
3 recommend a time sequence for their implementation. The program
4 may also contain the estimated cost of each project and indicate
5 probable operating and maintenance costs and probable revenues, if
6 any, as well as existing sources of funds or the need for additional
7 sources of funds for the implementation and operation of each project.
8 The program shall, as far as possible, be based on existing information
9 in the possession of the departments and agencies of the municipality
10 and shall take into account public facility needs indicated by the
11 prospective development shown in the master plan of the municipality
12 or as permitted by other municipal land use controls.

13 In preparing the program, the planning board shall confer, in a
14 manner deemed appropriate by the board, with the mayor, the chief
15 fiscal officer, other municipal officials and agencies, and the school
16 board or boards.

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

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

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

28

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

43 The program shall include:

44 a. a description of existing capital improvements, a map or maps
45 depicting the service area of each improvement and the costs to
46 improve or replace those improvements in order to meet existing or

1 prospective demand or stricter safety, environmental or regulatory
2 standards;

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

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

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

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

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

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

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

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

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

3 6. a. The municipal agency shall hold a hearing on each application
4 for development, [or] adoption, revision or amendment of the master
5 plan and capital improvement program adopted pursuant to section 10
6 of P.L....., c..... (C.) (pending before the Legislature as this bill).

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

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

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

26 e. Technical rules of evidence shall not be applicable to the
27 hearing, but the agency may exclude irrelevant, immaterial or unduly
28 repetitious evidence.

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

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

45 g. The municipal agency shall include findings of fact and
46 conclusions based thereon in each decision on any application for

1 development and shall reduce the decision to writing. The municipal
2 agency shall provide the findings and conclusions through:

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

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

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

38 i. A brief notice of the decision shall be published in the official
39 newspaper of the municipality, if there be one, or in a newspaper of
40 general circulation in the municipality. Such publication shall be
41 arranged by the applicant unless a particular municipal officer is so
42 designated by ordinance; provided that nothing contained in this act
43 shall be construed as preventing the applicant from arranging such
44 publication if he so desires. The municipality may make a reasonable
45 charge for its publication. The period of time in which an appeal of
46 the decision may be made shall run from the first publication of the

1 decision, whether arranged by the municipality or the applicant.
2 (cf: P.L.1984, c.20, s.4)

3
4 12. (New section) a. The governing bodies of two or more
5 municipalities may, by substantially similar ordinances duly adopted by
6 each governing body within six calendar months after the adoption of
7 the first such ordinance after notice and hearing as herein required,
8 enter into a joint agreement providing for the assessment of impact
9 fees for development impacts which are generated in one municipality
10 by a development situated in another municipality which is a party to
11 the agreement, as provided hereunder.

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

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

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

30
31 14. Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to
32 read as follows:

33 12. Except as otherwise provided by this act or in the code, before
34 construction or alteration of any building or structure, the owner, or
35 his agent, engineer or architect, shall submit an application in writing,
36 including signed and sealed drawings and specifications, to the
37 enforcing agency as defined in this act. The application shall be in
38 accordance with regulations established by the commissioner and on
39 a form prescribed by the commissioner and shall be accompanied by
40 payment of the fee to be established by the municipal governing body
41 by ordinance in accordance with standards established by the
42 commissioner. In addition, if appropriate, the application shall include
43 proof, by the owner, that 25% of the amount assessed as an impact fee
44 pursuant to section 6 of P.L. , c. (C.)(pending before the
45 Legislature as this bill) was paid to the municipality in which the
46 structure is situated, prior to receiving final development approval

1 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) and that another
2 25% of the total was paid to the appropriate municipality prior to
3 receiving a construction permit. The application for a construction
4 permit shall be filed with the enforcing agency and shall be a public
5 record; and no application for a construction permit shall be removed
6 from the custody of the enforcing agency after a construction permit
7 has been issued. Nothing contained in this paragraph shall be
8 interpreted as preventing the imposition of requirements in the code,
9 for additional permits for particular kinds of work, including but not
10 limited to plumbing, electrical, elevator, fire prevention equipment or
11 boiler installation or repair work, or in other defined situations.

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

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

41

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

44 15. No building or structure hereafter constructed shall be used or
45 occupied in whole or in part until a certificate of occupancy shall have
46 been issued by the enforcing agency. No building or structure

1 hereafter altered, in whole or in part, shall be used or occupied until
2 such a certificate has been issued, except that any use or occupancy in
3 an already existing building or structure that was not discontinued
4 during its alteration may be continued in the preexisting structure for
5 30 days after the completion of the alteration without the issuance of
6 a certificate of occupancy. A certificate of occupancy shall be issued
7 by the enforcing agency when all of the work covered by a
8 construction permit shall have been completed in accordance with the
9 permit, the code, and other applicable laws and ordinances and if
10 appropriate upon, proof that the remaining 50% of the impact fee
11 imposed pursuant to P.L. , c. (C.) (pending before the
12 Legislature as this bill) has been paid to the appropriate municipality
13 by the owner. In the case of any new home subject to sales surcharge
14 pursuant to P.L.1991, c.202 (C.46:3B-13 et al.) a certificate of
15 occupancy shall not be issued except after presentation of a receipt, or
16 verified duplicate thereof, from the Department of Community Affairs
17 evidencing the payment of the surcharge. On request of a holder of a
18 construction permit, the appropriate enforcing agency may issue a
19 temporary certificate of occupancy for a building or structure, or part
20 thereof, before the entire work covered by the construction permit has
21 been completed, if the part or parts of the building or structure to be
22 covered by the certificate may be occupied prior to completion of all
23 work in accordance with the permit, the code, and other applicable
24 laws and ordinances, without endangering the health and safety of the
25 occupants or users. When a building or structure is entitled thereto,
26 the enforcing agency shall issue a certificate of occupancy within 10
27 business days after receipt of a written application therefor in
28 accordance with regulations established by the commissioner on a
29 form prescribed by the commissioner accompanied by payment of a fee
30 to be established by the municipal governing body by ordinance in
31 accordance with standards established by the commissioner. The
32 certificate of occupancy shall certify that the building or structure has
33 been constructed in accordance with the provisions of the construction
34 permit, the code, and other applicable laws and ordinances.
35 (cf: P.L.1991, c.202, s.8)

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

1 related to impact fee uses; and any other assistance that is consistent
2 with the purposes of this act. The Commissioner of Education shall
3 provide assistance to the Commissioner of Community Affairs in the
4 development of formulas and methods for the calculation of impact
5 fees imposed to finance educational facilities.

6
7 17. This act shall take effect immediately.

8
9
10 STATEMENT

11
12 This bill would allow municipalities to impose an impact fee on
13 developers under certain circumstances.

14 A municipality which imposes an impact fee must do so by an
15 ordinance which sets forth detailed standards and guidelines regarding
16 the definition of a service unit and the specific purposes for which the
17 impact fee revenues may be expended. The impact fee ordinance shall
18 also contain a delineation of service areas for each capital
19 improvement and a fee schedule.

20 Municipalities may impose an impact fee to cover a broad range of
21 expenditure areas, including transportation, water treatment and
22 distribution, wastewater treatment and sewerage, flood control and
23 stormwater management, and educational facilities. Capital
24 improvements and facility expansion for which an impact fee is
25 imposed must bear a reasonable relationship to needs created by the
26 new development. A municipality may adopt such an impact fee
27 ordinance only if it has previously adopted a capital improvement
28 program. The capital improvement program referred to here is more
29 detailed than that which is currently authorized under section 20 of the
30 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-29). An
31 impact fee imposed to finance educational facilities shall be based upon
32 a facilities survey prepared by the school district pursuant to section
33 11 of P.L.1975, c.212 (C.18A:7A-11).

34 The municipal capital improvement program shall include: a
35 description of existing capital improvements in the service area; an
36 analysis of total capacity, current and projected usage of existing
37 improvements; a description of the future need for such improvements;
38 and a schedule of use for each category of capital improvement or
39 expansion.

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

46 The bill allows municipalities the option of entering into

1 inter-municipal agreements providing for the assessment of impact fees
2 for development impacts which are generated in one municipality by
3 a development situated in another municipality which is a party to the
4 agreement.

5 The bill sets forth terms and conditions under which municipalities
6 may assess and hold onto impact fee revenues. Fees shall be assessed
7 at the preliminary approval stage of a development application and
8 shall be paid, in stages, throughout the development process.
9 Municipalities are authorized to charge developers for interest or other
10 charges incurred in cases where a local unit must provide the
11 infrastructure which created the demand for the impact fee prior to
12 receiving full payment from the developer.

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

18

19

20

21

22 _____
Authorizes assessment of development impact fees by municipalities.