

SENATE, No. 1556

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1996

By Senator CONNORS

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

3

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

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

9 1. As used in this act:

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

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

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

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

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

34 2. The Legislature hereby finds and declares that:

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

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

9 c. Adoption of uniform [site improvement] engineering
10 construction standards for site improvements will satisfy the need to
11 ensure predictability;

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

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

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

28 g. The policymaking aspects of development review are best
29 separated from the making of technical determinations] uniform
30 statewide.

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

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

35 4. a. The board shall, no later than 180 days following the
36 appointment of its full membership, prepare and submit to the
37 commissioner recommendations for a range of Statewide [site
38 improvement] engineering construction standards for site
39 improvements for residential development. [The site improvement
40 standards shall implement the recommendations with respect to streets,
41 off-street parking, water supply, sanitary sewers and storm water
42 management of Article Six (with the exhibits appended thereto) of the
43 January 1987 "Model Subdivision and Site Plan Ordinance" prepared
44 for the department by The Center for Urban Policy Research at
45 Rutgers, The State University, except to the extent that the
46 recommendations set forth in the "Model Subdivision and Site Plan

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

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

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

40 b. The commissioner shall review the recommendations submitted
41 by the board and, following his review, shall establish, by regulation
42 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
43 c.410 (C.52:14B-1 et seq.), a set of Statewide [site improvement
44 standards] engineering construction standards for site improvements
45 to be followed by municipalities in granting development approval
46 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) and a standard

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

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

42 d. The board shall annually review the range of regulations adopted
43 pursuant to subsection b. of this section, and shall recommend to the
44 commissioner any changes in [those] the range of regulations which
45 the board deems necessary [based on recommended site improvement
46 standards promulgated under the authoritative auspices of any

1 academic or professional institution or organization]. Any changes
2 made in the regulations pursuant to this subsection shall be made
3 according to the same procedure and shall be subject to the same
4 waiver provisions as those set forth in subsections a., b. and c. of this
5 section.

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

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

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

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

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

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

38 b. Nothing in this act shall be construed to prohibit, preempt or in
39 any way affect the exercise of any authority by the State or any county
40 government with respect to engineering construction standards for site
41 improvements conferred by any other State law or regulation
42 promulgated thereunder.

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

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45 6. This act shall take effect immediately.

STATEMENT

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

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

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

17 The bill permits a municipality and a developer mutually to agree on
18 a waiver of any standard if the nature of the waiver is clearly stated in
19 writing and justified on an engineering basis. Under current law, either
20 a municipality or a developer may seek a waiver of any site
21 improvement standard but only if adhering to the standard would
22 jeopardize the public health and safety.

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

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

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35 Narrows focus of uniform site improvement guidelines to engineering
36 construction standards.