

SENATE, No. 1902

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senator SCOTT

1 AN ACT authorizing municipalities to establish procedures for  
2 development review of major projects proximate to municipal  
3 boundaries and supplementing P.L.1975, c.291 (C.40:55D-1 et  
4 seq.).

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

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9 1. This act shall be known and may be cited as the "Intermunicipal  
10 Development Impact Protection Act."

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12 2. The Legislature hereby finds and declares that:

13 a. Whereas the municipal power to zone which is enshrined in the  
14 New Jersey Constitution ensures that local residents have an  
15 unparalleled degree of influence over the character of the communities  
16 they live in, it leaves unresolved the issue of how to assure that those  
17 residents who live near municipal boundaries are not adversely  
18 affected by major developments situated in adjacent municipalities;

19 b. Although this dilemma has always been inherent in reserving  
20 zoning power to municipalities, it has been exacerbated by the  
21 continuing development of the State, the consumption of the remaining  
22 developable land, and a continuing increase in the rate of development  
23 on municipal boundaries, resulting in an alarming increase in the  
24 number of intermunicipal disputes over proposed major developments;

25 c. It is unlikely that this trend will reverse itself anytime soon or  
26 that government will be able to mitigate the adverse impacts of  
27 development through public spending;

28 d. Because of increasing concerns on the part of residents about  
29 traffic, air and water pollution and other impacts that do not observe  
30 municipal boundaries, and because municipalities are in competition  
31 with one another for ratables and therefore unlikely to cooperate with  
32 one another without some intervention by higher levels of government,  
33 it is incumbent upon the Legislature to recognize this problem and to  
34 provide some mechanism for intermunicipal cooperation.

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36 3. As used in this act:

37 "Affected municipality" means a municipality which adopts an

1 ordinance pursuant to section 4 of P.L. , c. (C. ) (pending  
2 before the Legislature as this bill) declaring a development in an  
3 adjacent municipality to be a development of intermunicipal impact.

4 "Development of intermunicipal impact" means any development of  
5 greater than 250,000 square feet of commercial, industrial or  
6 residential floor space, or any combination thereof, proposed to be  
7 developed within 500 feet of municipal borders situated on one parcel  
8 of land or on contiguous parcels of land in common ownership.

9 "Host municipality" means a municipality in which a development  
10 of intermunicipal impact is proposed to be situated.

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12 4. a. The governing body of any municipality may, upon the  
13 recommendation of the planning board, determine that a development  
14 in an adjacent municipality, is a development of intermunicipal impact.  
15 Any development determined to be a development of intermunicipal  
16 impact shall require the approval of the planning board or zoning  
17 board, as the case may be, of the host municipality and the planning  
18 board or planning boards, or zoning board or zoning boards, of the  
19 municipality or municipalities which have made the determination that  
20 the development is one of intermunicipal impact, meeting in joint  
21 session.

22 b. Any municipality shall make a determination that a development  
23 for which planning approval is being sought is a development of  
24 intermunicipal impact by the adoption of an ordinance which contains  
25 findings setting forth the reasons for this determination, which may  
26 include, but not be limited to:

27 (1) the deleterious impacts on environmental quality which will be  
28 experienced in the municipality as a result of the approval of the  
29 proposed development by the adjacent municipality including, but not  
30 limited to, traffic congestion, population density, crime, noise, water  
31 or air pollution, or other such factors whose impacts do not  
32 necessarily observe political boundaries;

33 (2) the incompatibility of the land use anticipated by the proposed  
34 development with land uses prevalent within the neighborhood or  
35 neighborhoods situated adjacent to the host municipality; and

36 (3) any increase in the need for municipal services in the  
37 municipality to accommodate the additional population which will live,  
38 work, shop at, or otherwise be served by the proposed development.

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40 5. Any municipality which adopts an ordinance pursuant to section  
41 4 of P.L. , c. (C. ) (pending before the Legislature as this  
42 bill), within five business days of the adoption thereof, shall provide a  
43 copy of the ordinance to the clerk of the municipality and secretary of  
44 the planning board or zoning board of the host municipality so that a  
45 joint session of the planning boards or zoning boards may be  
46 convened. For the purposes of section 5 of P.L.1984, c.20

1 (C.40:55D-10.3) an application for a development determined to be a  
2 development of intermunicipal impact shall be deemed complete when  
3 those planning boards or zoning boards which will consider the  
4 application have all certified the application for development to be  
5 complete. For those municipalities affected by the development of  
6 intermunicipal impact, the review period for the determination of  
7 whether or not the development application is complete shall  
8 commence upon the adoption of the ordinance determining the  
9 development to be a development of intermunicipal impact.

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11 6. Nothing in P.L. , c. (pending before the Legislature as this  
12 bill) shall be construed to affect the power of the board of adjustment  
13 to consider an application for development in the host municipality  
14 pursuant to section 63 of P.L.1975, c.291 (C.40:55D-76) or the  
15 powers of the planning board set forth in section 16 of P.L.1975,  
16 c.291 (C.40:55D-25). In addition, nothing shall be construed to affect  
17 the time periods within which land use decisions shall be made  
18 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
19 (C.40:55D-1 et seq.), or the hearing or notification requirements set  
20 forth thereunder.

21 Any approval or disapproval of any development of intermunicipal  
22 impact by an adjacent municipality shall be based upon subdivision and  
23 site plan regulations adopted by that municipality for that area of the  
24 municipality designated by the ordinance as affected by the proposed  
25 development.

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27 7. Any decision taken by two or more planning boards or zoning  
28 boards meeting in joint session to consider approval of a development  
29 of intermunicipal impact shall be by a majority of the full authorized  
30 membership of those planning boards or zoning boards. In considering  
31 the application for development, the planning boards or zoning boards  
32 shall attempt to balance, to the extent possible, the concerns of the  
33 municipality or municipalities which fear the negative impacts of the  
34 development with the interests of the host municipality.

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36 8. Notwithstanding the provisions of section 8 of P.L.1975, c.291  
37 (C.40:55D-17) to the contrary, any municipality represented on the  
38 joint planning board or zoning board which feels aggrieved by the  
39 decision on the application for approval of the development of  
40 intermunicipal impact may, within 10 days of the date of publication  
41 of the final decision, appeal that decision to the State Planning  
42 Commission in the Department of the Treasury established pursuant  
43 to section 2 of P.L.1985, c.398 (C.52:18A-197). The appeal to the  
44 State Planning Commission shall be made by serving the chairman of  
45 the commission in person or by certified mail with a notice of appeal,  
46 specifying the grounds therefor. The appeal shall be decided by the

1 commission only upon the record established before the planning  
2 boards or zoning boards.

3 The commission shall engage in a mediation and review process in  
4 an attempt to mediate a resolution of the outstanding issues which  
5 generated the appeal. If the commission is unsuccessful in assisting  
6 the aggrieved parties in arriving at a decision which is acceptable to all  
7 of the parties to the decision, the commission shall render a  
8 determination independently. In either case, the commission shall  
9 notify the planning boards or zoning boards that participated in the  
10 decision which was the subject of the appeal within five business days  
11 of making a determination regarding the development application.

12 Nothing in this section shall be construed to restrict the right of any  
13 party to obtain a review of the decision by any court of competent  
14 jurisdiction according to law.

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16 9. The provisions of this act establishing joint review of  
17 applications for developments of intermunicipal impact shall be  
18 applicable to any application for development which has not received  
19 final approval as of the effective date of P.L. , c. (pending  
20 before the Legislature as this bill) so long as that development has  
21 been found by an adjacent municipality to be a development of  
22 intermunicipal impact pursuant to an ordinance adopted within 60 days  
23 of the effective date of P.L. , c. (pending before the Legislature  
24 as this bill).

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26 10. This act shall take effect immediately.

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#### STATEMENT

30 Recognizing the dramatic increase in the number of land use  
31 disputes involving projects proposed in municipal border areas, this  
32 bill establishes a cooperative process designed to minimize such land  
33 use conflict.

34 The bill authorizes the governing body of any municipality to find  
35 a development project proposed in an adjacent municipality but within  
36 500 feet of the border with that municipality, to be a development of  
37 intermunicipal impact. The bill defines such a development as one  
38 involving the addition of over 250,000 square feet of space, regardless  
39 of whether the development is residential, industrial or commercial, or  
40 mixed use involving any combination of uses.

41 In order to find a development to be one of intermunicipal impact,  
42 a governing body, upon the recommendation of the planning board,  
43 shall adopt an ordinance stating the reasons for the determination,  
44 which shall include, but not be limited to, the deleterious impacts on  
45 environmental quality experienced by the affected municipality, the  
46 incompatibility of the land use anticipated by the proposed

1 development with land uses prevalent in the neighborhoods situated  
2 adjacent to the municipal border, and any increase in the need for  
3 municipal services to accommodate the additional population  
4 anticipated by the proposed development.

5 The bill requires that any development of intermunicipal impact be  
6 considered by a joint session of the planning boards or zoning boards  
7 of the host and affected municipality or municipalities. Those  
8 municipalities represented by those planning and zoning boards to be  
9 involved in the decision shall all be required to certify the application  
10 for development as complete. Otherwise, the review procedures shall  
11 be those set forth in the "Municipal Land Use Law" for any other  
12 development application, with the exception of the availability of an  
13 appeal mechanism. This bill provides that any dispute which is not  
14 resolved by the planning or zoning boards meeting in joint session may  
15 be appealed to the State Planning Commission which shall mediate  
16 between the municipalities involved. If such mediation is unsuccessful,  
17 the bill requires the commission to resolve the conflict.

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22 "Intermunicipal Development Impact Protection Act."