

SENATE, No. 2256

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senators INVERSO and LaROSSA

1 **AN ACT** concerning certain sewerage and municipal authorities'
2 escrow accounts, and supplementing P.L.1946, c.138 (C.40:14A-1
3 et seq.) and P.L.1957, c.183 (C.40:14B-1 et seq.).
4

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

7

8 1. The Legislature hereby finds and declares that:

9 a. It is necessary for the protection of the public health and safety
10 that sewerage authorities review and approve plans for utility
11 improvements which developers will convey to sewerage authorities
12 or which will serve more than one user or service unit;

13 b. Sewerage authorities have frequently required developers who
14 will be installing utility improvements to post large sums of money
15 early in the application process, long before the commencement of
16 construction;

17 c. Changes in the operation and lending procedures of financial
18 institutions have significantly restricted the amount of financing
19 available for development activities prior to the initiation of
20 construction;

21 d. It is in the public interest to improve regulatory efficiency
22 through standardized sewerage authority procedures;

23 e. The public interest is best served through the use of standardized
24 procedures to govern the approval and installation of utility
25 improvements which are consistent with and follow the accepted
26 procedures established in the "Municipal Land Use Law," P.L.1975,
27 c.291 (C.40:55D-1 et seq.).
28

29 2. As used in sections 3 through 8 of P.L. , c. (C.)
30 (now pending before the Legislature as this bill), "developer" means
31 the legal or beneficial owner or owners of a lot or of any land
32 proposed to be included in a proposed development, including the
33 holder of an option or contract to purchase, or other person having an
34 enforceable proprietary interest in such land, and who is submitting an
35 application for the installation of utility improvements pursuant to
36 P.L. , c. (C.) (now pending before the Legislature as this
37 bill).

1 3. a. Before recording of final subdivision plats or as a condition
2 of final site plan approval, the sewerage authority may require and
3 shall accept in accordance with the standards adopted pursuant to
4 sections 3 through 8 of P.L. , c. (C.) (now pending before
5 the Legislature as this bill) for the purpose of assuring the installation
6 and maintenance of on-tract sewer facility improvements:

7 (1) The furnishing of a performance guarantee in favor of the
8 sewerage authority in an amount not to exceed 120% of the cost of
9 installation, which cost shall be determined by the sewerage authority
10 engineer according to the method of calculation set forth in section 7
11 of P.L. , c. (C.) (now pending before the Legislature as
12 this bill), for improvements which the sewerage authority may deem
13 necessary or appropriate including sanitary sewers and related sewer
14 facilities and improvements.

15 The sewerage authority engineer shall prepare an itemized cost
16 estimate of the improvements covered by the performance guarantee,
17 which itemized cost estimate shall be appended to each performance
18 guarantee posted by the obligor.

19 (2) The furnishing of a maintenance guarantee to be posted with
20 the sewerage authority for a period not to exceed two years after final
21 acceptance of the improvement, in an amount not to exceed 15% of
22 the cost of the improvement, which cost shall be determined by the
23 sewerage authority engineer according to the method of calculation set
24 forth in section 7 of P.L. , c. (C.) (now pending before the
25 Legislature as this bill). In the event that other governmental agencies
26 or public utilities automatically will own the utilities to be installed or
27 the improvements are covered by a performance or maintenance
28 guarantee to another governmental agency, no performance or
29 maintenance guarantee, as the case may be, shall be required by the
30 sewerage authority for such utilities or improvements.

31 b. The time allowed for installation of the improvements for which
32 the performance guarantee has been provided may be extended by the
33 sewerage authority by resolution. As a condition or as part of any
34 such extension, the amount of any performance guarantee shall be
35 increased or reduced, as the case may be, to an amount not to exceed
36 120% of the cost of the installation, which cost shall be determined by
37 the sewerage authority engineer according to the method of
38 calculation set forth in section 7 of P.L. , c. (C.) (now
39 pending before the Legislature as this bill) as of the time of the
40 passage of the resolution.

41 c. If the required improvements are not completed or corrected in
42 accordance with the performance guarantee, the obligor and surety, if
43 any, shall be liable thereon to the sewerage authority for the
44 reasonable cost of the improvements not completed or corrected and
45 the sewerage authority may either prior to or after the receipt of the
46 proceeds thereof complete such improvements. Such completion or

1 correction of improvements shall be subject to the public bidding
2 requirements of the "Local Public Contracts Law," P.L.1971, c.198
3 (C.40A:11-1 et seq.).

4 d. (1) Upon substantial completion of all required utility
5 improvements, and the connection of same to the public system, the
6 obligor may request of the sewerage authority in writing, by certified
7 mail addressed in care of the chairman of the sewerage authority, that
8 the sewerage authority engineer prepare, in accordance with the
9 itemized cost estimate prepared by the sewerage authority engineer
10 and appended to the performance guarantee pursuant to subsection a.
11 of this section, a list of all uncompleted or unsatisfactory completed
12 improvements. If such a request is made, the obligor shall send a copy
13 of the request to the sewerage authority engineer. The request shall
14 indicate which improvements have been completed and which
15 improvements remain uncompleted in the judgment of the obligor.
16 Thereupon the sewerage authority engineer shall inspect all
17 improvements covered by obligor's request and shall file a detailed list
18 and report, in writing, with the sewerage authority, and shall
19 simultaneously send a copy thereof to the obligor not later than 45
20 days after receipt of the obligor's request.

21 (2) The list prepared by the sewerage authority engineer shall state,
22 in detail, with respect to each improvement determined to be
23 incomplete or unsatisfactory, the nature and extent of the
24 incompleteness of each incomplete improvement or the nature and
25 extent of, and remedy for, the unsatisfactory state of each completed
26 improvement determined to be unsatisfactory. The report prepared by
27 the sewerage authority engineer shall identify each improvement
28 determined to be complete and satisfactory together with a
29 recommendation as to the amount of reduction to be made in the
30 performance guarantee relating to the completed and satisfactory
31 improvements, in accordance with the itemized cost estimate prepared
32 by the sewerage authority engineer and appended to the performance
33 guarantee pursuant to subsection a. of this section.

34 e. (1) The sewerage authority, by resolution, shall either approve
35 the improvements determined to be complete and satisfactory by the
36 sewerage authority engineer, or reject any or all of these improvements
37 upon the establishment in the resolution of cause for rejection, and
38 shall approve and authorize the amount of reduction to be made in the
39 performance guarantee relating to the improvements accepted, in
40 accordance with the itemized cost estimate prepared by the sewerage
41 authority engineer and appended to the performance guarantee
42 pursuant to subsection a. of this section. This resolution shall be
43 adopted not later than 45 days after receipt of the list and report
44 prepared by the sewerage authority engineer. Upon adoption of the
45 resolution by the sewerage authority, the obligor shall be released from
46 all liability pursuant to its performance guarantee, with respect to

1 those approved improvements except for that portion adequately
2 sufficient to secure completion or correction of the improvements not
3 yet approved; provided that 30% of the amount of the performance
4 guarantee posted may be retained to ensure completion and
5 acceptability of all improvements.

6 (2) If the sewerage authority engineer fails to send or provide the
7 list and report as requested by the obligor pursuant to subsection d. of
8 this section within 45 days from receipt of the request, the obligor may
9 apply to the court in a summary manner for an order compelling the
10 sewerage authority engineer to provide the list and report within a
11 stated time and the cost of applying to the court, including reasonable
12 attorney's fees, may be awarded to the prevailing party.

13 If the sewerage authority fails to approve or reject the
14 improvements determined by the sewerage authority engineer to be
15 complete and satisfactory or reduce the performance guarantee for the
16 complete and satisfactory improvements within 45 days from the
17 receipt of the sewerage authority engineer's list and report, the obligor
18 may apply to the court in a summary manner for an order compelling,
19 within a stated time, approval of the complete and satisfactory
20 improvements and approval of a reduction in the performance
21 guarantee for the approvable complete and satisfactory improvements
22 in accordance with the itemized cost estimate prepared by the
23 sewerage authority engineer and appended to the performance
24 guarantee pursuant to subsection a. of this section; and the cost of
25 applying to the court, including reasonable attorney's fees, may be
26 awarded to the prevailing party.

27 (3) In the event that the obligor has made a cash deposit with the
28 sewerage authority as part of the performance guarantee, then any
29 partial reduction granted in the performance guarantee pursuant to this
30 subsection shall be applied to the cash deposit in the same proportion
31 as the original cash deposit bears to the full amount of the
32 performance guarantee.

33 f. If any portion of the required improvements is rejected, the
34 sewerage authority may require the obligor to complete or correct
35 such improvements and, upon completion or correction, the same
36 procedure of notification, as set forth in this section shall be followed.

37 g. Nothing herein, however, shall be construed to limit the right of
38 the obligor to contest by legal proceedings any determination of the
39 sewerage authority or the sewerage authority engineer.

40 h. The obligor shall reimburse the sewerage authority for all
41 reasonable inspection fees paid to the sewerage authority engineer for
42 the foregoing inspection of improvements; provided that the sewerage
43 authority may require of the developer a deposit for the inspection fees
44 in an amount not to exceed, except for extraordinary circumstances,
45 the greater of \$500 or 5% of the cost of improvements, which cost
46 shall be determined pursuant to section 7 of P.L. , c. (C.)

1 (now pending before the Legislature as this bill). For those
2 developments for which the reasonably anticipated fees are less than
3 \$10,000, fees may, at the option of the developer, be paid in two
4 installments. The initial amount deposited by a developer shall be 50%
5 of the reasonably anticipated fees. When the balance on deposit drops
6 to 10% of the reasonably anticipated fees because the amount
7 deposited by the developer has been reduced by the amount paid to the
8 sewerage authority engineer for inspection, the developer shall deposit
9 the remaining 50% of the anticipated inspection fees. For those
10 developments for which the reasonably anticipated fees are \$10,000 or
11 greater, fees may, at the option of the developer, be paid in four
12 installments. The initial amount deposited by a developer shall be 25%
13 of the reasonably anticipated fees. When the balance on deposit drops
14 to 10% of the reasonably anticipated fees because the amount
15 deposited by the developer has been reduced by the amount paid to the
16 sewerage authority engineer for inspection, the developer shall make
17 additional deposits of 25% of the reasonably anticipated fees. The
18 sewerage authority engineer shall not perform any inspection if
19 sufficient funds to pay for those inspections are not on deposit.

20 i. In the event that final approval is by stages or sections of
21 development, the provisions of this section shall be applied by stage or
22 section.

23 j. To the extent that any of the improvements have been dedicated
24 to the sewerage authority on the subdivision plat or site plan, the
25 sewerage authority shall be deemed, upon the release of any
26 performance guarantee required pursuant to subsection a. of this
27 section, to accept dedication for public use of sewer facilities and any
28 other improvements made thereon according to site plans and
29 subdivision plats approved by the sewerage authority, provided that
30 such improvements have been inspected and have received final
31 approval by the sewerage authority engineer.

32

33 4. a. The chief financial officer of a sewerage authority shall make
34 all of the payments to professionals for services rendered to the
35 sewerage authority for review of applications for development, review
36 and preparation of documents, inspection of improvements or other
37 purposes under the provisions of sections 3 through 8 of P.L. , c.
38 (C.) (now pending before the Legislature as this bill). Such
39 fees or charges shall be based upon a schedule established by
40 resolution. The application review and inspection charges shall be
41 limited only to professional charges for review of applications, review
42 and preparation of documents and inspections of developments under
43 construction and review by outside consultants when an application is
44 of a nature beyond the scope of the expertise of the professionals
45 normally utilized by the sewerage authority. The only costs that shall
46 be added to any such charges shall be actual out-of-pocket expenses

1 of any such professionals or consultants including normal and typical
2 expenses incurred in processing applications and inspecting
3 improvements. The sewerage authority shall not bill the applicant, or
4 charge any escrow account or deposit authorized under subsection b.
5 of this section, for any sewerage authority clerical or administrative
6 functions, overhead expenses, meeting room charges, or any other
7 sewerage authority costs and expenses except as provided for in this
8 section, nor shall a sewerage authority professional add any such
9 charges to his bill. If the salary, staff support and overhead for a
10 sewerage authority professional are provided by the sewerage
11 authority, the charge shall not exceed 200% of the sum of the products
12 resulting from multiplying (1) the hourly base salary, which shall be
13 established annually by resolution, of each of the professionals by (2)
14 the number of hours spent by the respective professional upon review
15 of the application for development or inspection of the developer's
16 improvements, as the case may be. For other professionals the charge
17 shall be at the same rate as all other work of the same nature by the
18 professional for the sewerage authority when fees are not reimbursed
19 or otherwise imposed on applicants or developers.

20 b. If the sewerage authority requires of the developer a deposit
21 toward anticipated sewerage authority expenses for these professional
22 services, the deposit shall be placed in an escrow account pursuant to
23 section 1 of P.L.1985, c.314 (C.40:14A-7.3). The amount of the
24 deposit required shall be reasonable in regard to the scale and
25 complexity of the development. The amount of the initial deposit
26 required shall be established by resolution. For review of applications
27 for development proposing a subdivision, the amount of the deposit
28 shall be calculated based on the number of proposed lots. For review
29 of applications for development proposing a site plan, the amount of
30 the deposit shall be based on the area of the site to be developed, or
31 the square footage of buildings to be constructed, or both. Deposits
32 for inspection fees shall be established in accordance with subsection
33 h. of section 3 of P.L. , c. (C.) (now pending before the
34 Legislature as this bill).

35 c. Each payment charged to the deposit for review of applications,
36 review and preparation of documents and inspection of improvements
37 shall be pursuant to a voucher from the professional, which voucher
38 shall identify the personnel performing the service, and for each date
39 the services performed, the hours spent to one-quarter hour
40 increments, the hourly rate and the expenses incurred. All
41 professionals shall submit vouchers to the chief financial officer of the
42 sewerage authority on a monthly basis in accordance with schedules
43 and procedures established by the chief financial officer of the
44 sewerage authority. If the services are provided by a sewerage
45 authority employee, the sewerage authority employee shall prepare and
46 submit to the chief financial officer of the sewerage authority a

1 statement containing the same information as required on a voucher,
2 on a monthly basis. The professional shall send an informational copy
3 of all vouchers or statements submitted to the chief financial officer of
4 the sewerage authority simultaneously to the applicant. The chief
5 financial officer of the sewerage authority shall prepare and send to the
6 applicant a statement which shall include an accounting of funds listing
7 all deposits, interest earnings, disbursements, and the cumulative
8 balance of the escrow account. This information shall be provided on
9 a quarterly basis, if monthly charges are \$1,000 or less, or on a
10 monthly basis if monthly charges exceed \$1,000. If an escrow account
11 or deposit contains insufficient funds to enable the sewerage authority
12 to perform required application reviews or improvement inspections,
13 the chief financial officer of the sewerage authority shall provide the
14 applicant with a notice of the insufficient escrow or deposit balance.
15 In order for work to continue on the development or the application,
16 the applicant shall within a reasonable time period post a deposit to the
17 account in an amount to be agreed upon by the sewerage authority and
18 the applicant. In the interim, any required health and safety
19 inspections shall be made and charged back against the replenishment
20 of funds.

21 d. The following close-out procedure shall apply to all deposits and
22 escrow accounts established under the provisions of sections 3 through
23 8 of P.L. , c. (C.) (now pending before the Legislature as
24 this bill) and shall commence after the sewerage authority has granted
25 final approval and signed the subdivision plat or site plan, in the case
26 of application review escrows and deposits, or after the improvements
27 have been approved as provided in section 3 of P.L. , c. (C.)
28 (now pending before the Legislature as this bill), in the case of
29 improvement inspection escrows and deposits. The applicant shall
30 send written notice by certified mail to the chief financial officer of the
31 sewerage authority, and to the relevant sewerage authority
32 professional, that the application or the improvements, as the case may
33 be, are completed. After receipt of such notice, the professional shall
34 render a final bill to the chief financial officer of the sewerage
35 authority within 30 days, and shall send a copy simultaneously to the
36 applicant. The chief financial officer of the sewerage authority shall
37 render a written final accounting to the applicant on the uses to which
38 the deposit was put within 45 days of receipt of the final bill. Any
39 balances remaining in the deposit or escrow account, including interest
40 in accordance with section 1 of P.L.1985, c.314 (C.40:14A-7.3), shall
41 be refunded to the developer along with the final accounting.

42 e. All professional charges for review of an application for
43 development, review and preparation of documents or inspection of
44 improvements shall be reasonable and necessary, given the status and
45 progress of the application or construction. Review fees shall be
46 charged only in connection with an application for development

1 presently pending before the sewerage authority or upon review of
2 compliance with conditions of approval, or review of requests for
3 modification or amendment made by the applicant. A professional
4 shall not review items which are subject to approval by any State
5 governmental agency and not under sewerage authority jurisdiction
6 except to the extent consultation with a State agency is necessary due
7 to the effect of State approvals in the subdivision or site plan.
8 Inspection fees shall be charged only for actual work shown on a
9 subdivision or site plan or required by an approving resolution.
10 Professionals inspecting improvements under construction shall charge
11 only for inspections that are reasonably necessary to check the
12 progress and quality of the work and such inspections shall be
13 reasonably based on the approved development plans and documents.

14 f. If the sewerage authority retains a different professional or
15 consultant in the place of the professional originally responsible for
16 development, application review, or inspection of improvements, the
17 sewerage authority shall be responsible for all time and expenses of the
18 new professional to become familiar with the application or the
19 project, and the sewerage authority shall not bill the applicant or
20 charge the deposit or the escrow account for any such services.

21

22 5. A sewerage authority shall not require that a maintenance
23 guarantee required pursuant to section 3 of P.L. , c. (C.)
24 (now pending before the Legislature as this bill) be in cash or that
25 more than 10% of a performance guarantee pursuant to that section be
26 in cash. A developer may, however, provide at his option some or all
27 of a maintenance guarantee in cash, or more than 10% of a
28 performance guarantee in cash.

29

30 6. a. An applicant shall notify in writing the sewerage authority
31 with copies to the chief financial officer and the professional whenever
32 the applicant disputes the charges made by a professional for service
33 rendered to the sewerage authority in reviewing applications for
34 development, review and preparation of documents, inspection of
35 improvements, or other charges made pursuant to the provisions of
36 sections 3 through 8 of P.L. , c. (C.) (now pending before
37 the Legislature as this bill). The sewerage authority, or its designee,
38 shall within a reasonable time period attempt to remediate any
39 disputed charges. If the matter is not resolved to the satisfaction of
40 the applicant, the applicant may appeal to the county construction
41 board of appeals established under section 9 of P.L.1975, c.217
42 (C.52:27D-127) any charge to an escrow account or a deposit by any
43 sewerage authority professional or consultant, or the cost of the
44 installation of improvements estimated by the sewerage authority
45 engineer pursuant to section 7 of P.L. , c. (C.) (now
46 pending before the Legislature as this bill). An applicant or his

1 authorized agent shall submit the appeal in writing to the county
2 construction board of appeals. The applicant or his authorized agent
3 shall simultaneously send a copy of the appeal to the sewerage
4 authority and any professional whose charge is the subject of the
5 appeal. An applicant shall file an appeal within 45 days from receipt
6 of the informational copy of the professional's voucher required by
7 subsection c. of section 4 of P.L. , c. (C.) (now pending
8 before the Legislature as this bill), except that if the professional has
9 not supplied the applicant with an informational copy of the voucher,
10 then the applicant shall file his appeal within 60 days from receipt of
11 the sewerage authority statement of activity against the deposit or
12 escrow account required by subsection c. of section 4 of P.L. , c.
13 (C.) (now pending before the Legislature as this bill). An
14 applicant may file an appeal for an ongoing series of charges by a
15 professional during a period not exceeding six months to demonstrate
16 that they represent a pattern of excessive or inaccurate charges. An
17 applicant making use of this provision need not appeal each charge
18 individually.

19 b. The county construction board of appeals shall hear the appeal,
20 render a decision thereon, and file its decision with a statement of the
21 reasons therefor with the sewerage authority not later than 10 business
22 days following the submission of the appeal, unless such period of time
23 has been extended with the consent of the applicant. The decision may
24 approve, disapprove, or modify the professional charges appealed
25 from. A copy of the decision shall be forwarded by certified or
26 registered mail to the party making the appeal, the sewerage authority,
27 and the professional involved in the appeal. Failure by the board to
28 hear an appeal and render and file a decision thereon within the time
29 limits prescribed in this subsection shall be deemed a denial of the
30 appeal for purposes of a complaint, application, or appeal to a court
31 of competent jurisdiction.

32 c. The county construction board of appeals shall provide rules for
33 its procedure in accordance with this section. The board shall have the
34 power to administer oaths and issue subpoenas to compel the
35 attendance of witnesses and the production of relevant evidence, and
36 the provisions of the "County and Municipal Investigations Law,"
37 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

38 d. During the pendency of any appeal, the sewerage authority shall
39 continue to process, hear, and decide the application for development,
40 and to inspect the development in the normal course, and shall not
41 withhold, delay, or deny reviews, inspections, signing of subdivision
42 plats or site plans, the reduction or the release of performance or
43 maintenance guarantees, the issuance of construction permits or
44 certificates of occupancy, or any other approval or permit because an
45 appeal has been filed or is pending under this section. The chief
46 financial officer of the sewerage authority may pay charges out of the

1 appropriate escrow account or deposit for which an appeal has been
2 filed. If a charge is disallowed after payment, the chief financial
3 officer of the sewerage authority shall reimburse the deposit or escrow
4 account in the amount of any such disallowed charge or refund the
5 amount to the applicant. If a charge is disallowed after payment to a
6 professional or consultant who is not an employee of the sewerage
7 authority, the professional or consultant shall reimburse the sewerage
8 authority in the amount of any such disallowed charge.

9 e. The Commissioner of Community Affairs shall promulgate rules
10 and regulations pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of
12 this section.

13

14 7. The cost of the installation of improvements for the purposes of
15 section 3 of P.L. , c. (C.) (now pending before the
16 Legislature as this bill) shall be estimated by the sewerage authority
17 engineer based on documented construction costs for public
18 improvements prevailing in the general area of the sewerage authority.
19 The developer may appeal the sewerage authority engineer's estimate
20 to the county construction board of appeals established under section
21 9 of P.L.1975, c.217 (C.52:27D-127).

22

23 8. The sewerage authority shall, for the purposes of section 3 of
24 P.L. , c. (C.) (now pending before the Legislature as this
25 bill), accept a performance guarantee or maintenance guarantee which
26 is an irrevocable letter of credit if it:

27 a. Constitutes an unconditional payment obligation of the issuer
28 running solely to the sewerage authority for an express initial period
29 of time in the amount determined pursuant to section 3 of P.L. , c.
30 (C.) (now pending before the Legislature as this bill);

31 b. Is issued by a banking or savings institution authorized to do and
32 doing business in this State;

33 c. Is for a period of time of at least one year; and

34 d. Permits the sewerage authority to draw upon the letter of credit
35 if the obligor fails to furnish another letter of credit which complies
36 with the provisions of this section 30 days or more in advance of the
37 expiration date of the letter of credit or such longer period in advance
38 thereof as is stated in the letter of credit.

39

40 9. The Legislature hereby finds and declares that:

41 a. It is necessary for the protection of the public health and safety
42 that municipal authorities review and approve plans for utility
43 improvements which developers will convey to municipal authorities
44 or which will serve more than one user or service unit;

45 b. Municipal authorities have frequently required developers who
46 will be installing utility improvements to post large sums of money

1 early in the application process, long before the commencement of
2 construction;

3 c. Changes in the operation and lending procedures of financial
4 institutions have significantly restricted the amount of financing
5 available for development activities prior to the initiation of
6 construction;

7 d. It is in the public interest to improve regulatory efficiency
8 through standardized municipal authority procedures;

9 e. The public interest is best served through the use of standardized
10 procedures to govern the approval and installation of utility
11 improvements which are consistent with and follow the accepted
12 procedures established in the "Municipal Land Use Law," P.L.1975,
13 c.291 (C.40:55D-1 et seq.).

14

15 10. As used in sections 11 through 16 of P.L. , c. (C.)
16 (now pending before the Legislature as this bill), "developer" means
17 the legal or beneficial owner or owners of a lot or of any land
18 proposed to be included in a proposed development, including the
19 holder of an option or contract to purchase, or other person having an
20 enforceable proprietary interest in such land, and who is submitting an
21 application for the installation of utility improvements pursuant to
22 P.L. , c. (C.) (now pending before the Legislature as this
23 bill).

24

25 11. a. Before recording of final subdivision plats or as a condition
26 of final site plan approval, the municipal authority may require and
27 shall accept in accordance with the standards adopted pursuant to
28 sections 11 through 16 of P.L. , c. (C.) (now pending
29 before the Legislature as this bill) for the purpose of assuring the
30 installation and maintenance of on-tract utility improvements:

31 (1) The furnishing of a performance guarantee in favor of the
32 municipal authority in an amount not to exceed 120% of the cost of
33 installation, which cost shall be determined by the municipal authority
34 engineer according to the method of calculation set forth in section 15
35 of P.L. , c. (C.) (now pending before the Legislature as
36 this bill), for improvements which the municipal authority may deem
37 necessary or appropriate including sanitary sewers and related utility
38 facilities and improvements.

39 The municipal authority engineer shall prepare an itemized cost
40 estimate of the improvements covered by the performance guarantee,
41 which itemized cost estimate shall be appended to each performance
42 guarantee posted by the obligor.

43 (2) The furnishing of a maintenance guarantee to be posted with
44 the municipal authority for a period not to exceed two years after final
45 acceptance of the improvement, in an amount not to exceed 15% of
46 the cost of the improvement, which cost shall be determined by the

1 municipal authority engineer according to the method of calculation
2 set forth in section 15 of P.L. , c. (C.) (now pending
3 before the Legislature as this bill). In the event that other
4 governmental agencies or public utilities automatically will own the
5 utilities to be installed or the improvements are covered by a
6 performance or maintenance guarantee to another governmental
7 agency, no performance or maintenance guarantee, as the case may be,
8 shall be required by the municipal authority for such utilities or
9 improvements.

10 b. The time allowed for installation of the improvements for which
11 the performance guarantee has been provided may be extended by the
12 municipal authority by resolution. As a condition or as part of any
13 such extension, the amount of any performance guarantee shall be
14 increased or reduced, as the case may be, to an amount not to exceed
15 120% of the cost of the installation, which cost shall be determined by
16 the municipal authority engineer according to the method of
17 calculation set forth in section 15 of P.L. , c. (C.) (now
18 pending before the Legislature as this bill) as of the time of the
19 passage of the resolution.

20 c. If the required improvements are not completed or corrected in
21 accordance with the performance guarantee, the obligor and surety, if
22 any, shall be liable thereon to the municipal authority for the
23 reasonable cost of the improvements not completed or corrected and
24 the municipal authority may either prior to or after the receipt of the
25 proceeds thereof complete such improvements. Such completion or
26 correction of improvements shall be subject to the public bidding
27 requirements of the "Local Public Contracts Law," P.L.1971, c.198
28 (C.40A:11-1 et seq.).

29 d. (1) Upon substantial completion of all required utility
30 improvements, and the connection of same to the public system, the
31 obligor may request of the municipal authority in writing, by certified
32 mail addressed in care of the chairman of the municipal authority, that
33 the municipal authority engineer prepare, in accordance with the
34 itemized cost estimate prepared by the municipal authority engineer
35 and appended to the performance guarantee pursuant to subsection a.
36 of this section, a list of all uncompleted or unsatisfactory completed
37 improvements. If such a request is made, the obligor shall send a copy
38 of the request to the municipal authority engineer. The request shall
39 indicate which improvements have been completed and which
40 improvements remain uncompleted in the judgment of the obligor.
41 Thereupon the municipal authority engineer shall inspect all
42 improvements covered by obligor's request and shall file a detailed list
43 and report, in writing, with the municipal authority, and shall
44 simultaneously send a copy thereof to the obligor not later than 45
45 days after receipt of the obligor's request.

46 (2) The list prepared by the municipal authority engineer shall

1 state, in detail, with respect to each improvement determined to be
2 incomplete or unsatisfactory, the nature and extent of the
3 incompleteness of each incomplete improvement or the nature and
4 extent of, and remedy for, the unsatisfactory state of each completed
5 improvement determined to be unsatisfactory. The report prepared by
6 the municipal authority engineer shall identify each improvement
7 determined to be complete and satisfactory together with a
8 recommendation as to the amount of reduction to be made in the
9 performance guarantee relating to the completed and satisfactory
10 improvements, in accordance with the itemized cost estimate prepared
11 by the municipal authority engineer and appended to the performance
12 guarantee pursuant to subsection a. of this section.

13 e. (1) The municipal authority, by resolution, shall either approve
14 the improvements determined to be complete and satisfactory by the
15 municipal authority engineer, or reject any or all of these
16 improvements upon the establishment in the resolution of cause for
17 rejection, and shall approve and authorize the amount of reduction to
18 be made in the performance guarantee relating to the improvements
19 accepted, in accordance with the itemized cost estimate prepared by
20 the municipal authority engineer and appended to the performance
21 guarantee pursuant to subsection a. of this section. This resolution
22 shall be adopted not later than 45 days after receipt of the list and
23 report prepared by the municipal authority engineer. Upon adoption
24 of the resolution by the municipal authority, the obligor shall be
25 released from all liability pursuant to its performance guarantee, with
26 respect to those approved improvements except for that portion
27 adequately sufficient to secure completion or correction of the
28 improvements not yet approved; provided that 30% of the amount of
29 the performance guarantee posted may be retained to ensure
30 completion and acceptability of all improvements.

31 (2) If the municipal authority engineer fails to send or provide the
32 list and report as requested by the obligor pursuant to subsection d. of
33 this section within 45 days from receipt of the request, the obligor may
34 apply to the court in a summary manner for an order compelling the
35 municipal authority engineer to provide the list and report within a
36 stated time and the cost of applying to the court, including reasonable
37 attorney's fees, may be awarded to the prevailing party.

38 If the municipal authority fails to approve or reject the
39 improvements determined by the municipal authority engineer to be
40 complete and satisfactory or reduce the performance guarantee for the
41 complete and satisfactory improvements within 45 days from the
42 receipt of the municipal authority engineer's list and report, the obligor
43 may apply to the court in a summary manner for an order compelling,
44 within a stated time, approval of the complete and satisfactory
45 improvements and approval of a reduction in the performance
46 guarantee for the approvable complete and satisfactory improvements

1 in accordance with the itemized cost estimate prepared by the
2 municipal authority engineer and appended to the performance
3 guarantee pursuant to subsection a. of this section; and the cost of
4 applying to the court, including reasonable attorney's fees, may be
5 awarded to the prevailing party.

6 (3) In the event that the obligor has made a cash deposit with the
7 municipal authority as part of the performance guarantee, then any
8 partial reduction granted in the performance guarantee pursuant to this
9 subsection shall be applied to the cash deposit in the same proportion
10 as the original cash deposit bears to the full amount of the
11 performance guarantee.

12 f. If any portion of the required improvements is rejected, the
13 municipal authority may require the obligor to complete or correct
14 such improvements and, upon completion or correction, the same
15 procedure of notification, as set forth in this section shall be followed.

16 g. Nothing herein, however, shall be construed to limit the right of
17 the obligor to contest by legal proceedings any determination of the
18 municipal authority or the municipal authority engineer.

19 h. The obligor shall reimburse the municipal authority for all
20 reasonable inspection fees paid to the municipal authority engineer for
21 the foregoing inspection of improvements; provided that the municipal
22 authority may require of the developer a deposit for the inspection fees
23 in an amount not to exceed, except for extraordinary circumstances,
24 the greater of \$500 or 5% of the cost of improvements, which cost
25 shall be determined pursuant to section 15 of P.L. , c. (C.)
26 (now pending before the Legislature as this bill). For those
27 developments for which the reasonably anticipated fees are less than
28 \$10,000, fees may, at the option of the developer, be paid in two
29 installments. The initial amount deposited by a developer shall be 50%
30 of the reasonably anticipated fees. When the balance on deposit drops
31 to 10% of the reasonably anticipated fees because the amount
32 deposited by the developer has been reduced by the amount paid to the
33 municipal authority engineer for inspection, the developer shall deposit
34 the remaining 50% of the anticipated inspection fees. For those
35 developments for which the reasonably anticipated fees are \$10,000 or
36 greater, fees may, at the option of the developer, be paid in four
37 installments. The initial amount deposited by a developer shall be 25%
38 of the reasonably anticipated fees. When the balance on deposit drops
39 to 10% of the reasonably anticipated fees because the amount
40 deposited by the developer has been reduced by the amount paid to the
41 municipal authority engineer for inspection, the developer shall make
42 additional deposits of 25% of the reasonably anticipated fees. The
43 municipal authority engineer shall not perform any inspection if
44 sufficient funds to pay for those inspections are not on deposit.

45 i. In the event that final approval is by stages or sections of
46 development, the provisions of this section shall be applied by stage or

1 section.

2 j. To the extent that any of the improvements have been dedicated
3 to the municipal authority on the subdivision plat or site plan, the
4 municipal authority shall be deemed, upon the release of any
5 performance guarantee required pursuant to subsection a. of this
6 section, to accept dedication for public use of water and sewer
7 facilities and any other improvements made thereon according to site
8 plans and subdivision plats approved by the municipal authority,
9 provided that such improvements have been inspected and have
10 received final approval by the municipal authority engineer.

11

12 12. a. The chief financial officer of a municipal authority shall
13 make all of the payments to professionals for services rendered to the
14 municipal authority for review of applications for development, review
15 and preparation of documents, inspection of improvements or other
16 purposes under the provisions of sections 11 through 16 of P.L. ,
17 c. (C.) (now pending before the Legislature as this bill).
18 Such fees or charges shall be based upon a schedule established by
19 resolution. The application review and inspection charges shall be
20 limited only to professional charges for review of applications, review
21 and preparation of documents and inspections of developments under
22 construction and review by outside consultants when an application is
23 of a nature beyond the scope of the expertise of the professionals
24 normally utilized by the municipal authority. The only costs that shall
25 be added to any such charges shall be actual out-of-pocket expenses
26 of any such professionals or consultants including normal and typical
27 expenses incurred in processing applications and inspecting
28 improvements. The municipal authority shall not bill the applicant, or
29 charge any escrow account or deposit authorized under subsection b.
30 of this section, for any municipal authority clerical or administrative
31 functions, overhead expenses, meeting room charges, or any other
32 municipal authority costs and expenses except as provided for in this
33 section, nor shall a municipal authority professional add any such
34 charges to his bill. If the salary, staff support and overhead for a
35 municipal authority professional are provided by the municipal
36 authority, the charge shall not exceed 200% of the sum of the products
37 resulting from multiplying (1) the hourly base salary, which shall be
38 established annually by resolution, of each of the professionals by (2)
39 the number of hours spent by the respective professional upon review
40 of the application for development or inspection of the developer's
41 improvements, as the case may be. For other professionals the charge
42 shall be at the same rate as all other work of the same nature by the
43 professional for the municipal authority when fees are not reimbursed
44 or otherwise imposed on applicants or developers.

45 b. If the municipal authority requires of the developer a deposit
46 toward anticipated municipal authority expenses for these professional

1 services, the deposit shall be placed in an escrow account pursuant to
2 section 1 of P.L.1985, c.316 (C.40:14B-20.1). The amount of the
3 deposit required shall be reasonable in regard to the scale and
4 complexity of the development. The amount of the initial deposit
5 required shall be established by resolution. For review of applications
6 for development proposing a subdivision, the amount of the deposit
7 shall be calculated based on the number of proposed lots. For review
8 of applications for development proposing a site plan, the amount of
9 the deposit shall be based on the area of the site to be developed, or
10 the square footage of buildings to be constructed, or both. Deposits
11 for inspection fees shall be established in accordance with subsection
12 h. of section 11 of P.L. , c. (C.) (now pending before the
13 Legislature as this bill).

14 c. Each payment charged to the deposit for review of applications,
15 review and preparation of documents and inspection of improvements
16 shall be pursuant to a voucher from the professional, which voucher
17 shall identify the personnel performing the service, and for each date
18 the services performed, the hours spent to one-quarter hour
19 increments, the hourly rate and the expenses incurred. All
20 professionals shall submit vouchers to the chief financial officer of the
21 municipal authority on a monthly basis in accordance with schedules
22 and procedures established by the chief financial officer of the
23 municipal authority. If the services are provided by a municipal
24 authority employee, the municipal authority employee shall prepare
25 and submit to the chief financial officer of the municipal authority a
26 statement containing the same information as required on a voucher,
27 on a monthly basis. The professional shall send an informational copy
28 of all vouchers or statements submitted to the chief financial officer of
29 the municipal authority simultaneously to the applicant. The chief
30 financial officer of the municipal authority shall prepare and send to
31 the applicant a statement which shall include an accounting of funds
32 listing all deposits, interest earnings, disbursements, and the
33 cumulative balance of the escrow account. This information shall be
34 provided on a quarterly basis, if monthly charges are \$1,000 or less,
35 or on a monthly basis if monthly charges exceed \$1,000. If an escrow
36 account or deposit contains insufficient funds to enable the municipal
37 authority to perform required application reviews or improvement
38 inspections, the chief financial officer of the municipal authority shall
39 provide the applicant with a notice of the insufficient escrow or
40 deposit balance. In order for work to continue on the development or
41 the application, the applicant shall within a reasonable time period post
42 a deposit to the account in an amount to be agreed upon by the
43 municipal authority and the applicant. In the interim, any required
44 health and safety inspections shall be made and charged back against
45 the replenishment of funds.

46 d. The following close-out procedure shall apply to all deposits and

1 escrow accounts established under the provisions of sections 11
2 through 16 of P.L. , c. (C.) (now pending before the
3 Legislature as this bill) and shall commence after the municipal
4 authority has granted final approval and signed the subdivision plat or
5 site plan, in the case of application review escrows and deposits, or
6 after the improvements have been approved as provided in section 11
7 of P.L. , c. (C.) (now pending before the Legislature as
8 this bill), in the case of improvement inspection escrows and deposits.
9 The applicant shall send written notice by certified mail to the chief
10 financial officer of the municipal authority, and to the relevant
11 municipal authority professional, that the application or the
12 improvements, as the case may be, are completed. After receipt of
13 such notice, the professional shall render a final bill to the chief
14 financial officer of the municipal authority within 30 days, and shall
15 send a copy simultaneously to the applicant. The chief financial officer
16 of the municipal authority shall render a written final accounting to the
17 applicant on the uses to which the deposit was put within 45 days of
18 receipt of the final bill. Any balances remaining in the deposit or
19 escrow account, including interest in accordance with section 1 of
20 P.L.1985, c.316 (C.40:14B-20.1), shall be refunded to the developer
21 along with the final accounting.

22 e. All professional charges for review of an application for
23 development, review and preparation of documents or inspection of
24 improvements shall be reasonable and necessary, given the status and
25 progress of the application or construction. Review fees shall be
26 charged only in connection with an application for development
27 presently pending before the municipal authority or upon review of
28 compliance with conditions of approval, or review of requests for
29 modification or amendment made by the applicant. A professional
30 shall not review items which are subject to approval by any State
31 governmental agency and not under municipal authority jurisdiction
32 except to the extent consultation with a State agency is necessary due
33 to the effect of State approvals in the subdivision or site plan.
34 Inspection fees shall be charged only for actual work shown on a
35 subdivision or site plan or required by an approving resolution.
36 Professionals inspecting improvements under construction shall charge
37 only for inspections that are reasonably necessary to check the
38 progress and quality of the work and such inspections shall be
39 reasonably based on the approved development plans and documents.

40 f. If the municipal authority retains a different professional or
41 consultant in the place of the professional originally responsible for
42 development, application review, or inspection of improvements, the
43 municipal authority shall be responsible for all time and expenses of
44 the new professional to become familiar with the application or the
45 project, and the municipal authority shall not bill the applicant or
46 charge the deposit or the escrow account for any such services.

1 13. A municipal authority shall not require that a maintenance
2 guarantee required pursuant to section 11 of P.L. , c. (C.)
3 (now pending before the Legislature as this bill) be in cash or that
4 more than 10% of a performance guarantee pursuant to that section be
5 in cash. A developer may, however, provide at his option some or all
6 of a maintenance guarantee in cash, or more than 10% of a
7 performance guarantee in cash.

8

9 14. a. An applicant shall notify in writing the municipal authority
10 with copies to the chief financial officer and the professional whenever
11 the applicant disputes the charges made by a professional for service
12 rendered to the municipal authority in reviewing applications for
13 development, review and preparation of documents, inspection of
14 improvements, or other charges made pursuant to the provisions of
15 sections 11 through 16 of P.L. , c. (C.) (now pending
16 before the Legislature as this bill). The municipal authority, or its
17 designee, shall within a reasonable time period attempt to remediate
18 any disputed charges. If the matter is not resolved to the satisfaction
19 of the applicant, the applicant may appeal to the county construction
20 board of appeals established under section 9 of P.L.1975, c.217
21 (C.52:27D-127) any charge to an escrow account or a deposit by any
22 municipal authority professional or consultant, or the cost of the
23 installation of improvements estimated by the municipal authority
24 engineer pursuant to section 15 of P.L. , c. (C.) (now
25 pending before the Legislature as this bill). An applicant or his
26 authorized agent shall submit the appeal in writing to the county
27 construction board of appeals. The applicant or his authorized agent
28 shall simultaneously send a copy of the appeal to the municipal
29 authority and any professional whose charge is the subject of the
30 appeal. An applicant shall file an appeal within 45 days from receipt
31 of the informational copy of the professional's voucher required by
32 subsection c. of section 12 of P.L. , c. (C.) (now pending
33 before the Legislature as this bill), except that if the professional has
34 not supplied the applicant with an informational copy of the voucher,
35 then the applicant shall file his appeal within 60 days from receipt of
36 the municipal authority statement of activity against the deposit or
37 escrow account required by subsection c. of section 12 of P.L. , c.
38 (C.) (now pending before the Legislature as this bill). An
39 applicant may file an appeal for an ongoing series of charges by a
40 professional during a period not exceeding six months to demonstrate
41 that they represent a pattern of excessive or inaccurate charges. An
42 applicant making use of this provision need not appeal each charge
43 individually.

44 b. The county construction board of appeals shall hear the appeal,
45 render a decision thereon, and file its decision with a statement of the
46 reasons therefor with the municipal authority not later than 10 business

1 days following the submission of the appeal, unless such period of time
2 has been extended with the consent of the applicant. The decision may
3 approve, disapprove, or modify the professional charges appealed
4 from. A copy of the decision shall be forwarded by certified or
5 registered mail to the party making the appeal, the municipal authority,
6 and the professional involved in the appeal. Failure by the board to
7 hear an appeal and render and file a decision thereon within the time
8 limits prescribed in this subsection shall be deemed a denial of the
9 appeal for purposes of a complaint, application, or appeal to a court
10 of competent jurisdiction.

11 c. The county construction board of appeals shall provide rules for
12 its procedure in accordance with this section. The board shall have the
13 power to administer oaths and issue subpoenas to compel the
14 attendance of witnesses and the production of relevant evidence, and
15 the provisions of the "County and Municipal Investigations Law,"
16 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

17 d. During the pendency of any appeal, the municipal authority shall
18 continue to process, hear, and decide the application for development,
19 and to inspect the development in the normal course, and shall not
20 withhold, delay, or deny reviews, inspections, signing of subdivision
21 plats or site plans, the reduction or the release of performance or
22 maintenance guarantees, the issuance of construction permits or
23 certificates of occupancy, or any other approval or permit because an
24 appeal has been filed or is pending under this section. The chief
25 financial officer of the municipal authority may pay charges out of the
26 appropriate escrow account or deposit for which an appeal has been
27 filed. If a charge is disallowed after payment, the chief financial
28 officer of the municipal authority shall reimburse the deposit or escrow
29 account in the amount of any such disallowed charge or refund the
30 amount to the applicant. If a charge is disallowed after payment to a
31 professional or consultant who is not an employee of the municipal
32 authority, the professional or consultant shall reimburse the municipal
33 authority in the amount of any such disallowed charge.

34 e. The Commissioner of Community Affairs shall promulgate rules
35 and regulations pursuant to the "Administrative Procedure Act,"
36 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of
37 this section.
38

39 15. The cost of the installation of improvements for the purposes
40 of section 11 of P.L. , c. (C.) (now pending before the
41 Legislature as this bill) shall be estimated by the municipal authority
42 engineer based on documented construction costs for public
43 improvements prevailing in the general area of the municipal authority.
44 The developer may appeal the municipal authority engineer's estimate
45 to the county construction board of appeals established under section
46 9 of P.L.1975, c.217 (C.52:27D-127).

1 16. The municipal authority shall, for the purposes of section 11 of
2 P.L. , c. (C.) (now pending before the Legislature as this
3 bill), accept a performance guarantee or maintenance guarantee which
4 is an irrevocable letter of credit if it:

5 a. Constitutes an unconditional payment obligation of the issuer
6 running solely to the municipal authority for an express initial period
7 of time in the amount determined pursuant to section 11 of P.L. , c.
8 (C.) (now pending before the Legislature as this bill);

9 b. Is issued by a banking or savings institution authorized to do and
10 doing business in this State;

11 c. Is for a period of time of at least one year; and

12 d. Permits the municipal authority to draw upon the letter of credit
13 if the obligor fails to furnish another letter of credit which complies
14 with the provisions of this section 30 days or more in advance of the
15 expiration date of the letter of credit or such longer period in advance
16 thereof as is stated in the letter of credit.

17

18 17. This act shall take effect 90 days after enactment.

19

20

STATEMENT

This bill would establish procedures and standards for sewerage and municipal and county utility authorities to use in the managing and accounting of escrow accounts and performance guarantees. It also would establish procedures for appealing disputed guarantee estimates and escrow charges. Existing law does not provide procedural guidelines for the use of escrow accounts and performance guarantees for sewerage and municipal and county utility authorities. The sponsor believes that such a procedural framework is needed. Since an accepted procedural framework already exists in the "Municipal Land Use Law," P.L. 1975, c.291 (C.40:55D-1 et seq.), and sewerage and municipal and county utility authorities are created by municipalities and counties, this same procedural framework is used in this bill.

36

37

38

39

Creates standards for certain sewerage and municipal and county utility authorities' escrow accounts.