

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3744

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2021

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3744.

As amended by the committee, this bill would prohibit the appeal of a municipal land use decision on the basis of a deviation from some requirement of law because a meeting or proceeding was held by virtual or remote means during the declared emergency attributable to the COVID-19 pandemic.

The “Municipal Land Use Law” (MLUL), P.L.1975, c.291 (C.40:55D-1 et seq.), requires municipal agencies (planning boards, boards of adjustment, and municipal governing bodies) to meet, consider, and take action on applications for development within specific time constraints, however, the State’s COVID-19 emergency declarations have imposed social distancing restrictions that limit or prohibit in-person public meetings or proceedings. To comply with these requirements and restrictions, municipal agencies have been forced to quickly transition from operating by in-person meetings and proceedings to virtual meeting and proceedings. This bill recognizes the difficulty of that transition and protects land use approvals granted during the COVID-19 emergency from appeals on grounds based upon the virtual meeting or proceeding if the meeting or proceeding was noticed and conducted consistently with State standards.

Under the bill, a decision of a municipal agency under the MLUL that is based, in whole or in part, on a virtual meeting or proceeding, could not be appealed on grounds attributable to convening the meeting or proceeding by virtual means under certain circumstances. These grounds would include, but not be limited to, the lack of a physical quorum, lack of proper notice, the conduct of the meeting or proceeding itself, or lack of a reasonable opportunity to be heard, provided that reasonable public notice and provision for public input were made under the circumstances. In order for an approval to be protected from appeal under the bill, the notice of the meeting or proceeding, and the conduct of the meeting or proceeding, must have been consistent with this bill, and with guidance documents issued by, or rules or regulation promulgated by, the Department of Community Affairs (DCA) and published on the department’s Internet website on the date the applicant requested the list pursuant to subsection c. of

section 7.1 of P.L.1975, c.291 (C. 40:55D-12). The bill would also require all notices required by the MLUL to include directions for remote access by the public as provided to the applicant by the municipal agency.

Finally, the bill provides that the applicant is entitled to rely upon directions for remote access provided by the municipal agency and that the applicant's reliance on such directions would not invalidate any meeting or proceeding or any decision of a municipal agency made at, or based, in whole or in part, on such meeting or proceeding.

As amended and reported by the committee, Senate Bill No. 3744 (1R) is identical to Assembly Bill No. 4881 (2R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

- limit applicability of the bill to the period of time during which the COVID-19 emergency declarations are in force, and for a reasonable time thereafter, if so provided by executive order;
- provide that notice of and conduct of a municipal land use meeting must be consistent with DCA guidance provided at the time the applicant requests a list of property owners entitled to notice under the MLUL
- extend the provisions of the bill to cover municipal agency proceedings;
- specify that the provisions of the bill cover decisions made at meetings or proceedings held virtually;
- specify that the provisions of the bill cover decisions at meeting or proceedings where some or all participants are not at the same physical location;
- specify that an applicant is entitled to rely upon directions for remote access provided by the municipal agency and that the applicant's reliance on such directions would not invalidate any meeting or proceeding or any decision of a municipal agency made at, or based, in whole or in part, on such meeting or proceeding; and
- make technical changes.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.