

ASSEMBLY, No. 2991

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED MARCH 24, 2014

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires sharing of revenues derived from major developments situated near municipal borders under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring sharing of revenues derived from major
2 developments near municipal borders, amending and
3 supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).
4

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

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

10 3.1. "Days" means calendar days.

11 "Density" means the permitted number of dwelling units per
12 gross area of land that is the subject of an application for
13 development, including noncontiguous land, if authorized by
14 municipal ordinance or by a planned development.

15 "Developer" means the legal or beneficial owner or owners of a
16 lot or of any land proposed to be included in a proposed
17 development, including the holder of an option or contract to
18 purchase, or other person having an enforceable proprietary interest
19 in such land.

20 "Development" means the division of a parcel of land into two or
21 more parcels, the construction, reconstruction, conversion,
22 structural alteration, relocation or enlargement of any building or
23 other structure, or of any mining excavation or landfill, and any use
24 or change in the use of any building or other structure, or land or
25 extension of use of land, for which permission may be required
26 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

27 "Development of intermunicipal impact" means a retail,
28 commercial or industrial development or a mixed use retail,
29 commercial or industrial development involving a property of
30 greater than 500,000 square feet situated within one-half mile of a
31 municipal border. Any development of this size which includes
32 residential units shall not be considered a development of
33 intermunicipal impact.

34 "Development potential" means the maximum number of
35 dwelling units or square feet of nonresidential floor area that may
36 be constructed on a specified lot or in a specified zone under the
37 master plan and land use regulations in effect on the date of the
38 adoption of the development transfer ordinance or on the date of the
39 adoption of the ordinance authorizing noncontiguous cluster, and in
40 accordance with recognized environmental constraints.

41 "Development regulation" means a zoning ordinance,
42 subdivision ordinance, site plan ordinance, official map ordinance
43 or other municipal regulation of the use and development of land, or
44 amendment thereto adopted and filed pursuant to P.L.1975, c.291
45 (C.40:55D-1 et seq.).

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Development restriction" means an agricultural restriction, a
2 conservation restriction, or a historic preservation restriction.

3 "Development transfer" or "development potential transfer"
4 means the conveyance of development potential, or the permission
5 for development, from one or more lots to one or more other lots by
6 deed, easement, or other means as authorized by ordinance.

7 "Development transfer bank" means a development transfer bank
8 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
9 or the State TDR Bank.

10 "Drainage" means the removal of surface water or groundwater
11 from land by drains, grading or other means and includes control of
12 runoff during and after construction or development to minimize
13 erosion and sedimentation, to assure the adequacy of existing and
14 proposed culverts and bridges, to induce water recharge into the
15 ground where practical, to lessen nonpoint pollution, to maintain
16 the integrity of stream channels for their biological functions as
17 well as for drainage, and the means necessary for water supply
18 preservation or prevention or alleviation of flooding.

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

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

23 "Final approval" means the official action of the planning board
24 taken on a preliminarily approved major subdivision or site plan,
25 after all conditions, engineering plans and other requirements have
26 been completed or fulfilled and the required improvements have
27 been installed or guarantees properly posted for their completion, or
28 approval conditioned upon the posting of such guarantees.

29 "Floor area ratio" means the sum of the area of all floors of
30 buildings or structures compared to the total area of land that is the
31 subject of an application for development, including noncontiguous
32 land, if authorized by municipal ordinance or by a planned
33 development.

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

37 "Governing body" means the chief legislative body of the
38 municipality. In municipalities having a board of public works,
39 "governing body" means such board.

40 "Host municipality" means a municipality in which a developer
41 proposes to site a development of intermunicipal impact.

42 "Historic district" means one or more historic sites and
43 intervening or surrounding property significantly affecting or
44 affected by the quality and character of the historic site or sites.

45 "Historic preservation restriction" means a "historic preservation
46 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

47 "Historic site" means any real property, man-made structure,
48 natural object or configuration or any portion or group of the

1 foregoing of historical, archeological, cultural, scenic or
2 architectural significance.

3 "Inherently beneficial use" means a use which is universally
4 considered of value to the community because it fundamentally
5 serves the public good and promotes the general welfare. Such a
6 use includes, but is not limited to, a hospital, school, child care
7 center, group home, or a wind, solar or photovoltaic energy facility
8 or structure.

9 "Instrument" means the easement, credit, or other deed
10 restriction used to record a development transfer.

11 "Interested party" means: (a) in a criminal or quasi-criminal
12 proceeding, any citizen of the State of New Jersey; and (b) in the
13 case of a civil proceeding in any court or in an administrative
14 proceeding before a municipal agency, any person, whether residing
15 within or without the municipality, whose right to use, acquire, or
16 enjoy property is or may be affected by any action taken under
17 P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,
18 acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et
19 seq.), or under any other law of this State or of the United States
20 have been denied, violated or infringed by an action or a failure to
21 act under P.L.1975, c.291 (C.40:55D-1 et seq.).

22 "Land" includes improvements and fixtures on, above or below
23 the surface.

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

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

36 (cf: P.L.2013, c.106, s.3)

37

38 2. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to
39 read as follows:

40 3.2. "Maintenance guarantee" means any security which may be
41 accepted by a municipality for the maintenance of any
42 improvements required by this act, including but not limited to
43 surety bonds, letters of credit under the circumstances specified in
44 section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

45 "Major subdivision" means any subdivision not classified as a
46 minor subdivision.

47 "Master plan" means a composite of one or more written or
48 graphic proposals for the development of the municipality as set

1 forth in and adopted pursuant to section 19 of P.L.1975, c.291
2 (C.40:55D-28).

3 "Mayor" means the chief executive of the municipality, whatever
4 his official designation may be, except that in the case of
5 municipalities governed by municipal council and municipal
6 manager the term "mayor" shall not mean the "municipal manager"
7 but shall mean the mayor of such municipality.

8 "Military facility" means any facility located within the State
9 which is owned or operated by the federal government, and which is
10 used for the purposes of providing logistical, technical, material,
11 training, and any other support to any branch of the United States
12 military.

13 "Military facility commander" means the chief official, base
14 commander or person in charge at a military facility.

15 "Minor site plan" means a development plan of one or more lots
16 which (1) proposes new development within the scope of
17 development specifically permitted by ordinance as a minor site
18 plan; (2) does not involve planned development, any new street or
19 extension of any off-tract improvement which is to be prorated
20 pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3)
21 contains the information reasonably required in order to make an
22 informed determination as to whether the requirements established
23 by ordinance for approval of a minor site plan have been met.

24 "Minor subdivision" means a subdivision of land for the creation
25 of a number of lots specifically permitted by ordinance as a minor
26 subdivision; provided that such subdivision does not involve (1) a
27 planned development, (2) any new street or (3) the extension of any
28 off-tract improvement, the cost of which is to be prorated pursuant
29 to section 30 of P.L.1975, c.291 (C.40:55D-42).

30 "Municipality" means any city, borough, town, township or
31 village.

32 "Municipal agency" means a municipal planning board or board
33 of adjustment, or a governing body of a municipality when acting
34 pursuant to this act and any agency which is created by or
35 responsible to one or more municipalities when such agency is
36 acting pursuant to this act.

37 "Municipal resident" means a person who is domiciled in the
38 municipality.

39 "Neighboring municipality" means a municipality or
40 municipalities situated adjacent to a host municipality.

41 "Nonconforming lot" means a lot, the area, dimension or location
42 of which was lawful prior to the adoption, revision or amendment of
43 a zoning ordinance, but fails to conform to the requirements of the
44 zoning district in which it is located by reason of such adoption,
45 revision or amendment.

46 "Nonconforming structure" means a structure the size, dimension
47 or location of which was lawful prior to the adoption, revision or
48 amendment of a zoning ordinance, but which fails to conform to the

1 requirements of the zoning district in which it is located by reasons
2 of such adoption, revision or amendment.

3 "Nonconforming use" means a use or activity which was lawful
4 prior to the adoption, revision or amendment of a zoning ordinance,
5 but which fails to conform to the requirements of the zoning district
6 in which it is located by reasons of such adoption, revision or
7 amendment.

8 "Noncontiguous cluster" means noncontiguous areas to be
9 developed as a single entity according to a plan containing an area,
10 or a section or sections thereof, to be developed for residential
11 purposes, nonresidential purposes, or a combination thereof, at a
12 greater concentration of density or intensity of land use than
13 authorized within the area, section, or sections, under conventional
14 development, in exchange for the permanent preservation of another
15 area, or a section or sections thereof, as common or public open
16 space, or for historic or agricultural purposes, or a combination
17 thereof.

18 "Office of Smart Growth" means the Office of State Planning
19 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
20 201).

21 "Official county map" means the map, with changes and
22 additions thereto, adopted and established, from time to time, by
23 resolution of the board of chosen freeholders of the county pursuant
24 to R.S.40:27-5.

25 "Official map" means a map adopted by ordinance pursuant to
26 article 5 of P.L.1975, c.291.

27 "Offsite" means located outside the lot lines of the lot in question
28 but within the property, of which the lot is a part, which is the
29 subject of a development application or the closest half of the street
30 or right-of-way abutting the property of which the lot is a part.

31 "Off-tract" means not located on the property which is the
32 subject of a development application nor on the closest half of the
33 abutting street or right-of-way.

34 "Onsite" means located on the lot in question and excluding any
35 abutting street or right-of-way.

36 "On-tract" means located on the property which is the subject of
37 a development application or on the closest half of an abutting
38 street or right-of-way.

39 "Open-space" means any parcel or area of land or water
40 essentially unimproved and set aside, dedicated, designated or
41 reserved for public or private use or enjoyment or for the use and
42 enjoyment of owners and occupants of land adjoining or
43 neighboring such open space; provided that such areas may be
44 improved with only those buildings, structures, streets and offstreet
45 parking and other improvements that are designed to be incidental
46 to the natural openness of the land or support its use for recreation
47 and conservation purposes.

48 (cf: P.L.2013, c.106, s.4)

1 3. Section 38 of P.L.1975, c.291 (C.40:55D-50) is amended to
2 read as follows:

3 38. Final approval of site plans and major subdivisions.

4 a. The planning board shall grant final approval if the detailed
5 drawings, specifications and estimates of the application for final
6 approval conform to the standards established by ordinance for final
7 approval, the conditions of preliminary approval and, in the case of
8 a major subdivision, the standards prescribed by N.J.S.46:26B-1 et
9 seq.; provided that in the case of a planned development, the
10 planning board may permit minimal deviations from the conditions
11 of preliminary approval necessitated by change of conditions
12 beyond the control of the developer since the date of preliminary
13 approval without the developer being required to submit another
14 application for development for preliminary approval.

15 In any municipality which has adopted an ordinance pursuant to
16 section 6 of P.L. , c. (C.) (pending before the Legislature as
17 this bill), the planning board shall not grant final approval of a
18 development of intermunicipal impact unless the developer submits
19 to the planning board a copy of parallel ordinances, adopted by the
20 host municipality and neighboring municipality setting forth a
21 revenue sharing agreement in accordance with the provisions of
22 sections 4, 5 and 6 of P.L. , c. (C.) (pending before the
23 Legislature as this bill).

24 b. Final approval shall be granted or denied within 45 days
25 after submission of a complete application to the administrative
26 officer, or within such further time as may be consented to by the
27 applicant. Failure of the planning board to act within the period
28 prescribed shall constitute final approval and a certificate of the
29 administrative officer as to the failure of the planning board to act
30 shall be issued on request of the applicant, and it shall be sufficient
31 in lieu of the written endorsement or other evidence of approval,
32 herein required, and shall be so accepted by the county recording
33 officer for purposes of filing subdivision plats.

34 Whenever review or approval of the application by the county
35 planning board is required by section 5 of P.L.1968, c. 285 (C.
36 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c.
37 285 (C. 40:27-6.6), in the case of a site plan, the municipal planning
38 board shall condition any approval that it grants upon timely receipt
39 of a favorable report on the application by the county planning
40 board or approval by the county planning board by its failure to
41 report thereon within the required time period.

42 (cf: P.L.2013, c.106, s.12)

43

44 4. (New section) Within 180 days following the effective date
45 of P.L. , c. (C.) (pending before the Legislature as this bill),
46 the Commissioner of Community Affairs shall promulgate, by
47 regulation, a model ordinance which includes a revenue sharing
48 agreement between two municipalities necessitated by a proposed

1 development of intermunicipal impact to be situated in one of those
2 municipalities.

3 The revenue sharing agreement shall provide that no less than 25
4 percent of the net revenues to be generated by the development in
5 the host municipality shall accrue to the neighboring municipality
6 and shall provide guidelines for municipalities in determining gross
7 and net revenues and in sharing revenues.

8 Upon the promulgation of the model ordinance, the
9 commissioner shall forthwith transmit a copy of that ordinance to
10 the municipal clerk of every municipality in the State.

11

12 5. (New section) Upon the promulgation of a model ordinance
13 by the commissioner pursuant to section 4 of P.L. , c. (C.)
14 (pending before the Legislature as this bill), the governing body of
15 any municipality may adopt an ordinance setting forth a revenue
16 sharing agreement with respect to any development of
17 intermunicipal impact situated within that municipality or a
18 neighboring municipality. Any such ordinance shall be consistent
19 with the model ordinance promulgated by the commissioner.

20

21 6. (New section) Beginning on the 30th day next following the
22 adoption of an ordinance by a municipality pursuant to section 5 of
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 any application for development which has not received final
25 approval shall be subject to the provisions of section 3 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill).

27

28 7. This act shall take effect immediately.

29

30

31 STATEMENT

32

33 This bill would require any developer who proposes to undertake
34 a development of intermunicipal impact in a municipality which
35 requires it to submit an intermunicipal revenue sharing agreement
36 as a condition for receiving development approval by the
37 municipality in which the development is to be situated.

38 The bill defines a development of intermunicipal impact to mean
39 a retail, commercial or industrial development or a mixed use
40 development involving a property of greater than 500,000 square
41 feet situated within one-half mile of a municipal border. Any
42 development of this size which includes residential units shall not
43 be considered a development of intermunicipal impact.

44 The bill requires the Commissioner of Community Affairs to
45 promulgate a model ordinance within 180 days following the bill's
46 effective date. This model ordinance would include a revenue
47 sharing agreement between two municipalities necessitated by a
48 proposed development of intermunicipal impact. This revenue

1 sharing agreement shall provide that no less than 25 percent of the
2 net revenues to be generated by the development in the host
3 municipality shall accrue to the neighboring municipality and shall
4 provide guidelines for municipalities in determining gross and net
5 revenues and in sharing revenues.

6 Upon the promulgation of the model ordinance, the governing
7 body of any municipality may adopt an ordinance setting forth a
8 revenue sharing agreement with respect to any development of
9 intermunicipal impact situated within that municipality or a
10 neighboring municipality. Any such ordinance shall be consistent
11 with the model ordinance promulgated by the commissioner.