

ASSEMBLY, No. 1140

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

SYNOPSIS

Designated the Equitable Disclosure Act of 2010, modifies provisions of MLUL concerning objectors to applications for development.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the "Municipal Land Use Law," designated as
2 the Equitable Disclosure Act of 2010, amending and
3 supplementing P.L.1975, c.291 and amending P.L.1977, c.336.
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 potential" means the maximum number of
28 dwelling units or square feet of nonresidential floor area that may
29 be constructed on a specified lot or in a specified zone under the
30 master plan and land use regulations in effect on the date of the
31 adoption of the development transfer ordinance or on the date of the
32 adoption of the ordinance authorizing noncontiguous cluster, and in
33 accordance with recognized environmental constraints.

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

39 "Development restriction" means an agricultural restriction, a
40 conservation restriction, or a historic preservation restriction.

41 "Development transfer" or "development potential transfer"
42 means the conveyance of development potential, or the permission
43 for development, from one or more lots to one or more other lots by
44 deed, easement, or other means as authorized by ordinance.

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

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

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

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

17 "Final approval" means the official action of the planning board
18 taken on a preliminarily approved major subdivision or site plan,
19 after all conditions, engineering plans and other requirements have
20 been completed or fulfilled and the required improvements have
21 been installed or guarantees properly posted for their completion, or
22 approval conditioned upon the posting of such guarantees.

23 "Floor area ratio" means the sum of the area of all floors of
24 buildings or structures compared to the total area of land that is the
25 subject of an application for development, including noncontiguous
26 land, if authorized by municipal ordinance or by a planned
27 development.

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

31 "Governing body" means the chief legislative body of the
32 municipality. In municipalities having a board of public works,
33 "governing body" means such board.

34 "Historic district" means one or more historic sites and
35 intervening or surrounding property significantly affecting or
36 affected by the quality and character of the historic site or sites.

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

39 "Historic site" means any real property, man-made structure,
40 natural object or configuration or any portion or group of the
41 foregoing of historical, archeological, cultural, scenic or
42 architectural significance.

43 "Inherently beneficial use" means a use which is universally
44 considered of value to the community because it fundamentally
45 serves the public good and promotes the general welfare. Such a
46 use includes, but is not limited to, a hospital, school, child care
47 center, group home, or a wind, solar or photovoltaic energy facility
48 or structure.

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

3 "Interested party" means:

4 (a) in a criminal or quasi-criminal proceeding, any citizen of the
5 State of New Jersey; and

6 (b) in the case of a civil proceeding in any court or in an
7 administrative proceeding before a municipal agency~~],~~];

8 (i) any party immediately concerned as defined in section 3.3 of
9 P.L.1975, c.291 (C.40:55D-6), and

10 (ii) any other person, whether residing within or without the
11 municipality, whose right to use, acquire, or enjoy property is or
12 may be affected by any action taken under P.L.1975, c.291
13 (C.40:55D-1 et seq.), or whose rights to use, acquire, or enjoy
14 property under P.L.1975, c.291 (C.40:55D-1 et seq.), or under any
15 other law of this State or of the United States have been denied,
16 violated or infringed by an action or a failure to act under P.L.1975,
17 c.291 (C.40:55D-1 et seq.); however, a person, including but not
18 limited to that person's employees, agents, representatives,
19 affiliates, or third party designees, shall not be an interested party
20 unless the person discloses how the person's right to use, acquire,
21 or enjoy property is or may be affected by any action taken on the
22 application, in some way other than by increased economic
23 competition.

24 "Land" includes improvements and fixtures on, above or below
25 the surface.

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

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

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

39

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

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

47 "Major subdivision" means any subdivision not classified as a
48 minor subdivision.

1 "Master plan" means a composite of one or more written or
2 graphic proposals for the development of the municipality as set
3 forth in and adopted pursuant to section 19 of P.L.1975, c.291
4 (C.40:55D-28).

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

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

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

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

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

32 "Municipality" means any city, borough, town, township or
33 village.

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

39 "Municipal resident" means a person who is domiciled in the
40 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 "Non-profit organization" means a non-profit corporation, non-
19 profit partnership, charitable trust or conservancy, or other non-
20 profit or not-for-profit entity.

21 "Office of Smart Growth" means the Office of State Planning
22 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
23 201).

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

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

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

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

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

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

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

1 to the natural openness of the land or support its use for recreation
2 and conservation purposes.

3 "Organization" means a corporation, partnership, trust, limited
4 liability company, limited liability partnership, limited partnership,
5 or any other for-profit entity.

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

7
8 3. Section 7 of P.L.1975, c.291 (C.40:55D-11) is amended to
9 read as follows:

10 7. Notices pursuant to section 7.1 and 7.2 of **【this act】**
11 P.L.1975, c.291 (C.40:55D-12 and C.40:55D-13) shall state the
12 date, time and place of the hearing, the nature of the matters to be
13 considered and, in the case of notices pursuant to **【subsection】**
14 section 7.1 of **【this act】** P.L.1975, c.291 (C.40:55D-12), an
15 identification of the property proposed for development by street
16 address, if any, or by reference to lot and block numbers as shown
17 on the current tax duplicate in the municipal tax assessor's office,
18 and the location and times at which any maps and documents for
19 which approval is sought are available pursuant to subsection **【6b】**
20 b. of section 6 of P.L.1975, c.291 (C.40:55D-10). Notices pursuant
21 to section 7.1 of P.L.1975, c.291 (C.40:55D-12) shall reference the
22 disclosure requirements of subsection d. of section 1 of P.L.1977,
23 c.336 (C.40:55D-48.1), and state that the disclosure requirements
24 shall be satisfied at the time of making an appearance and prior to
25 cross-examining any of the applicant's witnesses or providing
26 testimony on the application at the hearing.

27 (cf: P.L.1975, c.291, s.7)

28
29 4. Section 8 of P.L.1975, c.291 (C.40:55D-17) is amended to
30 read as follows:

31 8. Appeal to the governing body; time; notice; modification;
32 stay of proceedings. a. Any interested party may appeal to the
33 governing body any final decision of a board of adjustment
34 approving an application for development pursuant to subsection d.
35 of section 57 of P.L.1975, c.291 (C.40:55D-70), if so permitted by
36 ordinance. Such appeal shall be made within 10 days of the date of
37 publication of such final decision pursuant to subsection i. of
38 section 6 of P.L.1975, c.291 (C.40:55D-10). In the case of any
39 board established pursuant to article 10 of P.L.1975, c.291, the
40 governing body of the municipality in which the land is situated
41 shall be the "governing body" for purposes of this section. The
42 appeal to the governing body shall be made by serving the
43 municipal clerk in person or by certified mail with a notice of
44 appeal, specifying the grounds thereof and the name and address of
45 the appellant and name and address of his attorney, if represented.
46 Such appeal shall be decided by the governing body only upon the
47 record established before the board of adjustment.

1 b. Notice of the meeting to review the record below shall be
2 given by the governing body by personal service or certified mail to
3 the appellant, to those entitled to notice of a decision pursuant to
4 subsection h. of section 6 of P.L.1975, c.291 (C.40:55D-10) and to
5 the board from which the appeal is taken, at least 10 days prior to
6 the date of the meeting. The parties may submit oral and written
7 argument on the record at such meeting, and the governing body
8 shall provide for verbatim recording and transcripts of such meeting
9 pursuant to subsection f. of section 6 of P.L.1975, c.291 (C.40:55D-
10 10).

11 c. The appellant shall, (1) within five days of service of the
12 notice of the appeal pursuant to subsection a. hereof, arrange for a
13 transcript pursuant to subsection f. of section 6 of P.L.1975, c.291
14 (C.40:55D-10) for use by the governing body and pay a deposit of
15 \$50.00 or the estimated cost of such transcript, whichever is less, or
16 (2) within 35 days of service of the notice of appeal, submit a
17 transcript as otherwise arranged to the municipal clerk; otherwise,
18 the appeal may be dismissed for failure to prosecute.

19 The governing body shall conclude a review of the record below
20 not later than 95 days from the date of publication of notice of the
21 decision below pursuant to subsection i. of section 6 of P.L.1975,
22 c.291 (C.40:55D-10), unless the applicant consents in writing to an
23 extension of such period. Failure of the governing body to hold a
24 hearing and conclude a review of the record below and to render a
25 decision within such specified period shall constitute a decision
26 affirming the action of the board.

27 d. The governing body may reverse, remand, or affirm with or
28 without the imposition of conditions the final decision of the board
29 of adjustment approving a variance pursuant to subsection d. of
30 section 57 of P.L.1975, c.291 (C.40:55D-70). The review shall be
31 made on the record made before the board of adjustment.

32 e. The affirmative vote of a majority of the full authorized
33 membership of the governing body shall be necessary to reverse or
34 remand to the board of adjustment or to impose conditions on or
35 alter conditions to any final action of the board of adjustment.
36 Otherwise the final action of the board of adjustment shall be
37 deemed to be affirmed; a tie vote of the governing body shall
38 constitute affirmance of the decision of the board of adjustment.

39 f. An appeal to the governing body shall stay all proceedings
40 in furtherance of the action in respect to which the decision
41 appealed from was made, unless the board from whose action the
42 appeal is taken certifies to the governing body, after the notice of
43 appeal shall have been filed with such board, that by reason of facts
44 stated in the certificate, a stay would, in its opinion, cause imminent
45 peril to life or property. In such case, proceedings shall not be
46 stayed other than by an order of the Superior Court on application
47 upon notice to the board from whom the appeal is taken and on
48 good cause shown.

1 g. The governing body shall mail a copy of the decision to the
2 appellant or, if represented, then to his attorney, without separate
3 charge, and for a reasonable charge to any interested party who has
4 requested it, not later than 10 days after the date of the decision. A
5 brief notice of the decision shall be published in the official
6 newspaper of the municipality, if there be one, or in a newspaper of
7 general circulation in the municipality. Such publication shall be
8 arranged by the applicant unless a particular municipal officer is so
9 designated by ordinance; provided that nothing contained herein
10 shall be construed as preventing the applicant from arranging such
11 publication if he so desires. The governing body may make a
12 reasonable charge for its publication. The period of time in which
13 an appeal to a court of competent jurisdiction may be made shall
14 run from the first publication, whether arranged by the municipality
15 or the applicant.

16 h. Nothing in this act shall be construed to restrict the right of
17 any interested party to obtain a review by any court of competent
18 jurisdiction, according to law, however, an interested party shall not
19 have standing to institute an action or proceeding challenging any
20 final decision of a board of adjustment approving an application for
21 development unless that interested party appeared at the public
22 hearing and satisfied the disclosure requirements of subsection d. of
23 section 1 of P.L.1977, c.336 (C.40:55D-48.1).
24 (cf: P.L.1991, c.256, s.3)
25

26 5. Section 9 of P.L.1975, c.291 (C.40:55D-18) is amended to
27 read as follows:

28 9. Enforcement. a. The governing body of a municipality shall
29 enforce this act and any ordinance or regulation made and adopted
30 hereunder. To that end, the governing body may require the
31 issuance of specified permits, certificates or authorizations as a
32 condition precedent to (1) the erection, construction, alteration,
33 repair, remodeling, conversion, removal or destruction of any
34 building or structure, (2) the use or occupancy of any building,
35 structure or land, and (3) the subdivision or resubdivision of any
36 land; and shall establish an administrative officer and offices for the
37 purpose of issuing such permits, certificates or authorizations; and
38 may condition the issuance of such permits, certificates and
39 authorizations upon the submission of such data, materials, plans,
40 plats and information as is authorized hereunder and upon the
41 express approval of the appropriate State, county or municipal
42 agencies; and may establish reasonable fees to cover administrative
43 costs for the issuance of such permits, certificates and
44 authorizations. The administrative officer shall issue or deny a
45 zoning permit within 10 business days of receipt of a request
46 therefor. If the administrative officer fails to grant or deny a zoning
47 permit within this period, the failure shall be deemed to be an
48 approval of the application for the zoning permit. In case any

1 building or structure is erected, constructed, altered, repaired,
2 converted, or maintained, or any building, structure or land is used
3 in violation of this act or of any ordinance or other regulation made
4 under authority conferred hereby, the proper local authorities of the
5 municipality or an interested party, in addition to other remedies,
6 may institute any appropriate action or proceedings to prevent such
7 unlawful erection, construction, reconstruction, alteration, repair,
8 conversion, maintenance or use, to restrain, correct or abate such
9 violation, to prevent the occupancy of said building, structure or
10 land, or to prevent any illegal act, conduct, business or use in or
11 about such premises; however, an interested party shall not have
12 standing to institute an action or proceeding challenging any final
13 decision of a board of adjustment or planning board approving an
14 application for development unless the interested party appeared at
15 the public hearing and satisfied the disclosure requirements of
16 subsection d. of section 1 of P.L.1977, c.336 (C.40:55D-48.1).

17 b. The court, on motion of a defendant whose application for
18 development is affected by the commencement of an action or
19 proceeding pursuant to subsection a. of this section, or of a
20 municipality or municipal agency joined as a defendant in the
21 action or proceeding, may require the posting of security or other
22 equitable terms as it deems appropriate.

23 c. Whenever the court determines in an action or proceeding
24 commenced pursuant to subsection a. of this section that a
25 municipality or municipal agency joined as a defendant acted
26 properly within the scope of its delegated authority and that the
27 challenged action of the municipality or municipal agency should
28 be upheld, the court may award attorneys' fees, costs, and expenses
29 to the municipality or municipal agency, if and to the extent the
30 attorneys' fees, costs, and expenses were paid out of public funds
31 and not funded or reimbursed by an applicant, developer, or other
32 third party.

33 d. Actions or proceedings commenced pursuant to subsection a.
34 of this section shall not be commenced or prosecuted for any
35 improper purpose, such as to harass or to cause unnecessary delay
36 or costs of litigation. The claims asserted therein shall be warranted
37 by existing law, or by a non-frivolous argument for the extension,
38 modification, or reversal of existing law or the establishment of
39 new law. A defendant, within 10 days of receipt of the summons
40 and complaint, may demand in writing the discontinuance of an
41 action or proceeding, on the ground that the claims asserted therein
42 are frivolous or that the action or proceeding has been commenced
43 for an improper purpose. If the plaintiff does not discontinue the
44 action or proceeding in response to the defendant's demand, and the
45 court subsequently determines the claims asserted therein to be
46 frivolous, or that the action or proceeding was commenced for an
47 improper purpose, then in connection with the dismissal thereof,
48 and in addition to the security posted, if any, the court may award

1 to each of the defendants reasonable attorneys' fees and all costs
2 and expenses of the action or proceedings, as and to the extent
3 provided by applicable court rule; provided, however, that nothing
4 in this subsection shall be construed as limiting or restricting an
5 award of attorneys' fees, costs, and expenses to a prevailing
6 municipality or municipal agency pursuant to subsection c. of this
7 section. In addition, the court may impose sanctions on the
8 plaintiff, the attorney for plaintiff, or both, in addition to awarding
9 attorneys' fees, costs, and expenses to a defendant, as and to the
10 extent provided by applicable court rule.

11 (cf: P.L.2001, c.49, s.1)

12
13 6. Section 16 of P.L.1975, c.291 (C.40:55D-25) is amended to
14 read as follows:

15 16. a. The planning board shall follow the provisions of **【this**
16 **act】** P.L.1975, c.291 (C.40:55D-1 et seq.) and shall accordingly
17 exercise its power in regard to:

18 (1) The master plan pursuant to article 3;

19 (2) Subdivision control and site plan review pursuant to article
20 6;

21 (3) The official map pursuant to article 5;

22 (4) The zoning ordinance including conditional uses pursuant to
23 article 8;

24 (5) The capital improvement program pursuant to article 4;

25 (6) Variances and certain building permits in conjunction with
26 subdivision, site plan and conditional use approval pursuant to
27 article 7.

28 b. The planning board may:

29 (1) Participate in the preparation and review of programs or
30 plans required by State or federal law or regulation;

31 (2) Assemble data on a continuing basis as part of a continuous
32 planning process; **【and】**

33 (3) Perform such other advisory duties as are assigned to it by
34 ordinance or resolution of the governing body for the aid and
35 assistance of the governing body or other agencies or officers;

36 (4) (a) Establish committees consisting of less than a quorum of
37 board members, with or without the board's attorney, experts, and
38 technical staff, for the purpose of reviewing an application for
39 development filed with the board, except when reviewing a
40 variance, pursuant to subsection d. of section 57 of P.L.1975, c.291
41 (C.40:55D-70). Any such committee may review procedural or
42 substantive issues relating to the application for development or
43 changes suggested by the technical staff with the applicant, the
44 applicant's professionals, or both, prior to the commencement of a
45 public hearing on the application. Any matter considered or
46 discussed by the committee or any recommendation made by the
47 committee shall not be binding on either the board or the applicant.
48 A meeting of any such committee shall not constitute a meeting of

1 the board, and notice shall not be required.

2 (b) Nothing herein shall be construed to prevent or prohibit a
3 board's attorney, experts, and technical staff from meeting with the
4 applicant's counterparts before or after commencement of a public
5 hearing on an application; and

6 (5) Meet jointly with the governing body, zoning board of
7 adjustment, or both, for the purpose of discussing the annual report
8 prepared pursuant to section 16 of P.L.1985, c.516 (C.40:55D-
9 70.1).

10 c. (1) In a municipality having a population of 15,000 or less, a
11 nine-member planning board, if so provided by ordinance, shall
12 exercise, to the same extent and subject to the same restrictions, all
13 the powers of a board of adjustment; but the Class I and the Class
14 III members shall not participate in the consideration of
15 applications for development which involve relief pursuant to
16 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

17 (2) In any municipality, a nine-member planning board, if so
18 provided by ordinance, subject to voter referendum, shall exercise,
19 to the same extent and subject to the same restrictions, all the
20 powers of a board of adjustment; but the Class I and the Class III
21 members shall not participate in the consideration of applications
22 for development which involve relief pursuant to subsection d. of
23 section 57 of P.L.1975, c.291 (C.40:55D-70).

24 d. In a municipality having a population of 2,500 or less, the
25 planning board, if so provided by ordinance, shall exercise, to the
26 same extent and subject to the same restrictions, all of the powers of
27 an historic preservation commission, provided that at least one
28 planning board member meets the qualifications of a Class A
29 member of an historic preservation commission and at least one
30 member meets the qualifications of a Class B member of that
31 commission.

32 e. In any municipality in which the planning board exercises
33 the power of a zoning board of adjustment pursuant to subsection c.
34 of this section, a zoning board of adjustment may be appointed
35 pursuant to law, subject to voter referendum permitting
36 reconstitution of the board. The public question shall be initiated
37 through an ordinance adopted by the governing body.

38 (cf: P.L.1999, c.27, s.1)

39

40 7. Section 1 of P.L.1977, c.336 (C.40:55D-48.1) is amended to
41 read as follows:

42 1. **【A corporation or partnership applying to a planning board**
43 **or a board of adjustment or to the governing body of a municipality**
44 **for permission to subdivide a parcel of land into six or more lots, or**
45 **applying for a variance to construct a multiple dwelling of 25 or**
46 **more family units or for approval of a site to be used for**
47 **commercial purposes】** a. An application for development submitted
48 by an organization, as defined in section 3.2 of P.L.1975, c.291

1 (C.40:55D-5), shall list the names and addresses of all members,
2 stockholders or individual partners [owning] holding at least a 10%
3 [of its stock of any class or at least 10% of the] ownership interest
4 in the [partnership, as the case may be] organization, including any
5 other organization holding at least a 10% ownership interest in the
6 organization submitting the application for development, and shall
7 also identify the owner of the property that is the subject of the
8 application for development, including any organization holding at
9 least a 10% ownership interest in the property.

10 b. An organization other than the applicant appearing at a
11 hearing shall, at the time of making its appearance and prior to
12 cross-examining any of the applicant's witnesses or providing
13 testimony on the application, submit to the municipal agency a
14 certification or affidavit of an authorized officer or representative of
15 the organization, disclosing the names and addresses of all
16 members, stockholders or individual partners holding at least a 10%
17 ownership interest in the organization, including any other
18 organization holding at least a 10% ownership interest in the
19 organization.

20 c. An application for development submitted by a nonprofit
21 organization shall list the names and addresses of all officers and
22 trustees of the non-profit organization. A nonprofit organization
23 that is not the applicant shall, at the time of making its appearance
24 at the hearing and prior to cross-examining any of the applicant's
25 witnesses or providing testimony on the application, submit to the
26 municipal agency a certification or affidavit disclosing the names
27 and addresses of all officers and trustees of the nonprofit
28 organization.

29 d. At the time of making an appearance at the hearing and prior
30 to cross-examining any of the applicant's witnesses or providing
31 testimony on the application, a person, organization or nonprofit
32 organization other than the applicant shall disclose under oath:

33 1. the full name and address of the person, organization or
34 nonprofit organization;

35 2. the name of the person's employer, if any;

36 3. any affiliation with, or financial support provided to the
37 person, organization or nonprofit organization directly or indirectly
38 by, an economic competitor of the applicant or developer;

39 4. the full name and address of any other person, organization
40 or nonprofit organization responsible for the payment of fees and
41 costs of professionals appearing or presenting testimony on behalf
42 of the person, organization or nonprofit organization; and

43 5. a statement explaining how that person's or organization's
44 or nonprofit organization's right to use, acquire, or enjoy property
45 is or may be affected by any action taken on the application.

46 (cf: P.L.1977, c.336, s.1)

1 8. Section 2 of P.L.1977, c.336 (C.40:55D-48.2) is amended to
2 read:

3 2. If **【a corporation or partnership】** an organization owns an
4 interest equivalent to 10% or more of 【the stock of a corporation, or
5 10% or greater interest in a partnership,】 an organization that is
6 subject to the disclosure requirements pursuant to section 1 of 【this
7 act】 P.L.1977, c.336 (C.40:55D-48.1), that 【corporation or
8 partnership】 organization shall list the names and addresses of its
9 **【stockholders】** interest holders holding 10% or 【more of its stock
10 or of 10% or】 greater interest in the 【partnership, as the case may
11 be, and this requirement shall be followed by every corporate
12 stockholder or partner in a partnership, until the names and
13 addresses of the noncorporate stockholders and individual partners,
14 exceeding the 10% ownership criterion established in this act, have
15 been listed】 organization.
16 (cf: P.L.1977, c.336, s.2)

17
18 9. Section 3 of P.L. 1977, c.336 (C.40:55D-48.3) is amended to
19 read as follows:

20 3. a. No municipal planning board, board of adjustment or
21 **【municipal】** governing body shall approve the application of any
22 **【corporation or partnership】** organization or non-profit organization
23 which does not comply with 【this act】 P.L.1977, c.336 (C.40:55D-
24 48.1 et seq.). Any approval not in compliance with P.L.1977, c.336
25 (C.40:55D-48.1 et seq.) shall be voidable in a proceeding in lieu of
26 prerogative writ in the Superior Court.

27 b. Subject to the applicable provisions of subsection h. of
28 section 8 of P.L.1975, c.291 (C.40:55D-17) and subsection a. of
29 section 9 of P.L.1975, c.291 (C.40:55D-18), an interested party may
30 institute a proceeding in lieu of prerogative writ in the Superior
31 Court to challenge any approval granted by a municipal planning
32 board, board of adjustment, or governing body on the grounds that
33 such action is void for the reasons stated in subsection a. of this
34 section, and if the court shall find that the approval was not in
35 compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), the court
36 may declare the approval to be void.

37 c. No planning board, board of adjustment or municipal
38 governing body shall consider any testimony or evidence submitted
39 on behalf of any person, organization, or nonprofit organization
40 which does not comply with P.L.1977, c.336 (C.40:55D-48.1 et
41 seq.). Any condition of any approval or any denial based on
42 testimony or evidence submitted by a person, organization, or non-
43 profit organization not in compliance with P.L.1977, c.336
44 (C.40:55D-48.1 et seq.) shall be voidable in proceeding in lieu of
45 prerogative writ in the Superior Court.

46 d. An applicant may institute a proceeding in lieu of
47 prerogative writ in the Superior Court to challenge any condition of

1 any approval or any denial of an application for development by a
2 municipal planning board, board of adjustment, or governing body
3 on the grounds that such action is voidable pursuant to subsection c.
4 of this section, and if the court shall find that the condition of
5 approval or denial was based substantially on testimony or evidence
6 submitted by a person, organization, or non-profit organization not
7 in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), the
8 court may declare the condition of approval to be void or in the case
9 of denial of the application for development, may reverse the denial
10 and remand the application to the appropriate board for approval of
11 the application with the imposition of appropriate conditions.

12 (cf: P.L.1977, c.336, s.3)

13
14 10. Section 4 of P.L.1977, c.336 (C.40:55D-48.4) is amended to
15 read as follows:

16 4. Any [corporation or partnership which conceals the names
17 of the stockholders owning 10% or more of its stock, or of the
18 individual partners owning a 10% or greater interest in the
19 partnership, as the case may be,] organization or non-profit
20 organization failing to disclose in accordance with P.L.1977, c.336
21 (C.40:55D-48.1 et seq.), shall be subject to a fine of \$1,000.00 to
22 \$10,000.00 which shall be [recovered] recoverable in the name of
23 the municipality in any court of record in the State in a summary
24 manner pursuant to ["The Penalty Enforcement Law" (N.J.S.
25 2A:58-1 et seq.)] the "Penalty Enforcement Law of 1999,"
26 P.L.1999, c.274 (C.2A:58-10 et seq.).

27 (cf: P.L.1977, c.336, s.4)

28
29 11. (New section) Unless a stay has been issued by a court of
30 competent jurisdiction, a planning board or a board of adjustment
31 shall have continuing jurisdiction to hear an application for
32 development, and a developer may perfect approvals,
33 notwithstanding the pendency of an appeal concerning an
34 application for development of the same parcel.

35
36 12. This act shall take effect immediately.

37 38 39 STATEMENT

40
41 This bill, designated the Equitable Disclosure Act of 2010
42 applies the same rules for objectors and applicants in the land use
43 approval and appeals process. The goal is to make sure land use
44 boards and other boards of jurisdictions receive full disclosure of
45 applicants and objectors. Due process rights are fully maintained
46 under this bill. Disclosure requirements are applied to objectors and
47 applicants on a level playing field.

1 The proposed legislation applies current case law and court rules
2 for the disclosure of all interests before a land use board or court.
3 The legislation addresses coordinated efforts to delay approvals that
4 are oftentimes undertaken by economic competitors and are at times
5 clandestine. The Wall Street Journal reports how these covert
6 operations are proudly referred to as “black arts” by the groups
7 undertaking them. (“Rival Chains Secretly Fund Opposition to
8 Walmart,” The Wall Street Journal, June 7, 2010.)

9 The approval and appeal process outline in the "Municipal Land
10 Use Law" (MLUL), P.L.1975, c.291 (C40:55D-1 et seq.) has
11 become a tool for economic competitors of land use applicants. The
12 tactic is to delay final approval of projects at the expense of
13 taxpayers, businesses, and developers. Economic competitors who
14 have no legitimate land use based objections to an application are
15 manipulating the MLUL with a strategy of delay and deception.

16 This bill does not limit anyone’s rights, including economic
17 competitors, with legitimate, land-use based objections from
18 appearing and testifying. The bill contains the following
19 components:

20 1. Clarifies the definition of interested party in the MLUL to
21 exclude economic competition as the sole reason for standing while
22 at the same time protects economic competitors standing as “a party
23 immediately concerned” and gives them an opportunity to make
24 their case as to how the approval would negatively impact their
25 position on land use grounds (language modeled after case law);

26 2. Adds transparency and fairness by applying disclosure
27 requirements to objectors similar to the ownership disclosure
28 requirements for the applicant. They include providing: name and
29 address, employer, affiliation with an economic competitor, who is
30 paying for professional fees if any, and a statement on how the right
31 to use, acquire, or enjoy property is affected;

32 3. Empowers court, in its discretion, to award attorney’s fees
33 that were paid with public funds should an approval be upheld on
34 appeal;

35 4. Empowers court, in its discretion, to award applicant’s
36 attorney’s fees should the case be deemed to be frivolous (language
37 modeled from court rules);

38 5. Empowers court, at its discretion, to order appellant to post
39 security (modeled after court rules);

40 6. Provides planning or zoning board with continuing
41 jurisdiction over an application notwithstanding an appeal unless a
42 stay has been issued by the reviewing court;

43 7. Requires participation in public hearing process in order to
44 have standing to appeal to courts.