SENATE, No. 1324



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Authorizes municipal assessment of development impact fees following State guidelines and makes an appropriation.

CURRENT VERSION OF TEXT

As introduced.



An Act authorizing the assessment of development impact fees, amending and supplementing P.L.1975, c.291, supplementing P.L.1975, c.212 (C.18A:7A-1 et seq.), amending P.L.1975, c.217, and making an appropriation.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) Sections 1, 2, 6 through 9, 11, 14 through 16 and 19 through 22 shall be known and may be cited as the "Municipal Development Impact Fee Authorization Act."

2. (New section) The Legislature finds and declares that:

a. Over the past number of years, the State of New Jersey has experienced unprecedented economic growth which has resulted in substantial building and development activity throughout the State;

b. While the building boom of the 1980's was a positive phenomenon to the extent that it was associated with the growth of jobs and a higher standard of living, the rapid rate of development in those years also created major public policy challenges, in particular, upgrading the existing infrastructure to support that growth and allow for future development;

c. Of the considerable impacts associated with new development, the burden it places on an older, and often inadequate infrastructure is one which the Legislature views with particular concern in light of the potential dangers associated with deteriorating water supply facilities and sewer systems and the pressure which that development places on a long-neglected road network which already handles dangerously high levels of traffic;

d. The burden placed on older and often inadequate public school facilities is also one which the Legislature views with particular concern. The increased number of students generated by new development has a considerable impact on the ability of local school districts to provide a thorough and efficient education for their students; and

e. It is therefore a valid public policy of the State and in the public interest that municipalities be enabled to levy impact fees on new development in order to make those improvements in the local infrastructure or to build new or expand existing school facilities which are necessary to accommodate the new development.

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

3. For the purposes of this act, unless the context clearly indicates a different meaning:

The term "shall" indicates a mandatory requirement, and the term "may" indicates a permissive action.

"Administrative officer" means the clerk of the municipality, unless a different municipal official or officials are designated by ordinance or statute.

"Agricultural restriction" means an "agricultural deed restriction for farmland preservation purposes" as defined in section 3 of P.L.1983, c.32 (C.4:1C-13).

"Agricultural land" means "farmland" as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

"Applicant" means a developer submitting an application for development.

"Application for development" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

"Approving authority" means the planning board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of P.L.1975, c.291 (C.40:55D-1 et seq.).

"Board of adjustment" means the board established pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69).

"Building" means a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof.

"Cable television company" means a cable television company as defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

"Capital improvement" means **[**a governmental acquisition of real property or major construction project**]** any facility for the provision of public services with a life expectancy of five or more years, owned and operated or leased and operated by or on behalf of the State or a political subdivision thereof.

"Circulation" means systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

"Cluster development" means a contiguous cluster or noncontiguous cluster that is not a planned development.

"Commission" means the Development Impact Fee Review and Advisory Commission established pursuant to section 19 of P.L.    , c.    (C.      ) (pending before the Legislature as this bill).

"Common open space" means an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

"Conditional use" means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.

"Conservation restriction" means a "conservation restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

"Contiguous cluster" means a contiguous area to be developed as a single entity according to a plan containing a section or sections to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the section or sections under conventional development, in exchange for the permanent preservation of another section or other sections of the area as common or public open space, or for historic or agricultural purposes, or a combination thereof.

"Conventional" means development other than cluster development or planned development.

"County agriculture development board" or "CADB" means a county agriculture development board established by a county pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-14).

"County master plan" means a composite of the master plan for the physical development of the county in which the municipality is located, with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the county planning board pursuant to R.S.40:27-2 and R.S.40:27-4.

"County planning board" means the county planning board, as defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county in which the land or development is located.

(cf: P.L.2013, c.106, s.2)

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

3.1. "Days" means calendar days.

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

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

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

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

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

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

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

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

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

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

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

"Facility expansion" means the expansion of the capacity of an existing capital improvement in order that the improvement may serve new development.

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

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

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

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

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

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

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

"Impact fee" means cash or in-kind payments required to be paid by a developer as a condition for approval of a major subdivision or major site plan for the developer's proportional share of the cost of providing new or expanded reasonable and necessary capital improvements located outside the property limits of the subdivision or development but reasonably related to the subdivision or development based upon the need for the improvement created by, and the benefits conferred upon, the subdivision or development, based on fair and reasonable standards provided to municipalities by the commission as part of the technical assistance required pursuant to subsection a. of section 19 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Individual unit of development" means a dwelling unit in the case of a residential development, a square foot in the case of a non-residential development or any other standard employed by a municipality for different categories of development as a basis upon which to establish a service unit.

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

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

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

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

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

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

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

5. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to read as follows:

3.4. "Sedimentation" means the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

"Sending zone" means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), within which development may be restricted and which is otherwise consistent with the provisions of section 8 of P.L.2004, c.2 (C.40:55D-144).

"Service area" means that area to be served by the capital improvement or facility expansion as designated in the capital improvement program adopted by a municipality under section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

"Site plan" means a development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board adopted pursuant to article 6 of **[**this act**]** P.L.1975, c.291 (C.40:55D-1 et seq.).

"Standards of performance" means standards (1) adopted by ordinance pursuant to subsection **[**52d.**]** d. of section 52 of P.L.1975, c.291 (C.40:55D-65) regulating noise levels, glare, earthborn or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the municipality or (2) required by applicable federal or State laws or municipal ordinances.

"State Transfer of Development Rights Bank," or "State TDR Bank," means the bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51).

"Street" means any street, avenue, boulevard, road, parkway, viaduct, drive or other way (1) which is an existing State, county or municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action as provided by this act, or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

"Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: (1) divisions of land found by the planning board or subdivision committee thereof appointed by the chairman to be for agricultural purposes where all resulting parcels are 5 acres or larger in size, (2) divisions of property by testamentary or intestate provisions, (3) divisions of property upon court order, including but not limited to judgments of foreclosure, (4) consolidation of existing lots by deed or other recorded instrument and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term "subdivision" shall also include the term "resubdivision."

"Transcript" means a typed or printed verbatim record of the proceedings or reproduction thereof.

"Variance" means permission to depart from the literal requirements of a zoning ordinance pursuant to sections 47 **[**and**]**, subsections **[**29.2b., 57c. and 57d.**]** b. of section 29.2, and subsections c. and d. of section 57 of **[**this act**]** P.L.1975, c.291 (C.40:55D-60, 40:55D-40 and 40:55D-70).

"Wind, solar or photovoltaic energy facility or structure" means a facility or structure for the purpose of supplying electrical energy produced from wind, solar, or photovoltaic technologies, whether such facility or structure is a principal use, a part of the principal use, or an accessory use or structure.

"Zoning permit" means a document signed by the administrative officer (1) which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and (2) which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency pursuant to sections 47 and 57 of **[**this act**]** P.L.1975, c.291 (C.40:55D-60 and 40:55-70).

(cf: PL.2009, c.146, s.2)

6. (New section) a. The governing body of a municipality wherein the planning board has adopted a master plan pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and a capital improvement program pursuant to section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill) may adopt an ordinance establishing an impact fee.

An impact fee ordinance adopted pursuant to this section may apply to all major site plans or subdivisions submitted within the municipality. Alternatively, any municipality may include within its ordinance a threshold limiting the assessment of an impact fee to developments of above a certain size.

Any impact fee ordinance adopted pursuant to this section shall include detailed standards and guidelines regarding: (1) the definition of a service unit, including specific measures of consumption, use, generation or discharge attributable to particular land uses, densities and characteristics of development; and (2) the specific purposes for which the impact fee revenues may be expended.

An impact fee ordinance shall also include a delineation of service areas for each capital improvement whose upgrading or expansion is to be funded out of impact fee revenues and a fee schedule which clearly sets forth the amount of the fee to be charged for each service unit.

In addition, the impact fee ordinance shall include a methodology for calculating a credit to be allowed as an offset against the impact fee otherwise payable to reflect that portion of the property taxes on the proposed development which is attributable to net debt service and capital outlay, as the case may be, committed prior to the submission of the application for preliminary approval toward financing capital improvements or facility expansions.

b. An impact fee may be imposed by a municipality under this section in order to generate revenue for funding or recouping the costs of new capital improvements or facility expansions necessitated by new development. Improvements and expansions for which an impact fee is to be imposed shall bear a reasonable relationship to needs created by the new development. An impact fee authorized under this section may include contributions for: any transportation improvement necessitated by a new development in a county which is not covered by a transportation development district created pursuant to the "New Jersey Transportation Development District Act of 1989," P.L.1989, c.100 (C.27:1C-1 et al.); water treatment and distribution; wastewater treatment and sewerage; flood control and stormwater management; municipal parks and recreation facilities; public safety and related facilities; and educational facilities necessitated by residential development; provided, however, that a municipality may levy an impact fee for any of the above areas only if it has previously adopted the appropriate plan element or elements set forth in paragraphs (3) through (16) of subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28) in order to justify the projections of need for the capital improvement or facility expansion outlined in the capital improvement program; and provided further that any impact fee imposed to finance educational facilities be based upon a long-range facilities plan approved by the Commissioner of Education pursuant to law or regulation.

No municipal impact fee ordinance shall take effect unless it has been certified pursuant to subsection b. of section 19 of P.L.    ,      c.  (C.     ) (pending before the Legislature as this bill). A municipality shall not submit an ordinance to the commission for certification until 150 days have elapsed following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

For the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), sewer or water connection fees, charges or assessments by a municipal or county utilities authority or municipal water or sewer department shall be considered an impact fee and shall be governed by those laws which authorize the assessment of those fees. No other charges may be assessed hereunder to finance any capital improvements otherwise authorized under the “sewerage authorities law,” P.L.1946, c.138 (C.40:14A-1 et seq.), the “municipal and county utilities authorities law,” P.L.1957, c.183 (C.40:14B-1 et seq.), the “Municipal and County Sewerage Act,” (N.J.S.40A:26A-1 et seq.) or the “County and Municipal Water Supply Act,” (N.J.S.40A:31-1 et seq.).

c. No impact fee shall be assessed against any low income housing or moderate income housing as defined under P.L.1985, c.222 (C.52:27D-301 et al.) or within any environmental opportunity zone established pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153). In the case of low income housing or moderate income housing situated within an inclusionary development, an impact fee may be assessed against the market priced units within the inclusionary development; however, the fees which would otherwise be assessed against the low or moderate income units, as the case may be, shall not be passed along to the purchasers of market priced units.

d. An impact fee levied by a municipality may be used to fund amortized or lump-sum charges incurred by the municipality, capital recovery fees and contributions in aid of construction. Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on obligations issued by or on behalf of the municipality to finance the capital improvements or facility expansions identified in the capital improvement program adopted pursuant to section 11 of P.L.     ,       c.    (C.     ) (pending before the Legislature as this bill) and are not used to reimburse bond funds expended for facilities not identified in the capital improvement program or for any other purpose.

If the municipality determines that there will be any interest or other charges incurred by, or to be incurred by, the municipality in constructing any capital improvement or facility expansion prior to receiving payment of any impact fee assessed against a developer, then the municipality may charge or factor into the calculation of the impact fee the interest or other charges, provided, however, that all of the interest, other charges and the developer's impact fee payment for capital improvements or facility expansion shall not exceed 120% of the cost of the capital improvement or facility expansion being borne by the developer.

e. An ordinance adopted in accordance with P.L.      ,       c.     (C.      ) (pending before the Legislature as this bill) shall provide for the assessment of impact fees at the time of preliminary development approval. Impact fees shall be paid on a per-unit basis as follows: 50% prior to receiving a construction permit for a given unit pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) and the remaining 50% prior to receiving a certificate of occupancy for a given unit pursuant to section 15 of P.L.1975, c.217 (C.52:27D-133).

f. Each municipality which assesses an impact fee pursuant to an ordinance adopted and certified pursuant to P.L.     , c.      (C.       ) (pending before the Legislature as this bill) shall prepare and submit a report to the commission January 31 next following the adoption of the ordinance and every 12 months thereafter on a form adopted and circulated by the commission, listing each development which has been assessed an impact fee, the types of capital improvements or facility expansions for which a fee has been assessed, the amount of the fee, and in the event that the capital improvements or facility expansions for which a fee has been assessed have been financed through the issuance of bonds, lease-purchase agreements or other financing mechanisms, the method of financing employed in connection with all of the capital improvements or facility expansions for which the fee has been assessed.

Failure to report within 30 days of the deadline for reporting on the part of a municipality which has adopted an impact fee ordinance which has been certified by the commission shall mean that the impact fee ordinance is no longer certified and that it shall remain uncertified until the municipality reports to the commission as required pursuant to this subsection. If the ordinance is amended following its invalidation pursuant to this subsection, the municipality shall be required to recommence the certification process with the amended ordinance.

7. (New section) a. No impact fee imposed by a municipality shall be in an amount exceeding the development's proportional share of the current reasonable cost of constructing the capital improvement or facility expansion for which the fee is being assessed. Any impact fee revenue that is not applied immediately to the purpose for which it was collected shall be deposited in a banking institution or savings and loan association in this State insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in a special infrastructure trust fund bearing interest at minimum rate currently paid by the institution or depository on time or savings deposits. Impact fees shall be segregated and designated according to the capital improvements for which those fees were assessed. Impact fees shall not be deemed to be general revenues of the municipality.

Any impact fee revenue collected shall be expended within the period anticipated in the ordinance enacting the impact fee, but in no case shall the municipality maintain unexpended impact fees for more than eight years after the date of collection of the final payment for any development, except as provided in section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill), unless construction has already begun on the capital improvement or facility expansion for which the impact fees were collected.

b. Upon receipt by the governing body, impact fees for public school facilities shall be segregated in a separate municipal account to be transferred upon request of the school board to the school district's capital reserve or debt service account.

c. Any impact fee revenue not expended, as provided in subsection a. of this section, shall be returned, with interest, to the person or entity who made payment or to the heirs, successors or assigns of such person upon the request of that person or his heirs, successor or assigns. Any person or entity making a claim for the return of unexpended impact fee revenue shall provide documentation to the municipality to sufficiently substantiate the claim of the person or entity to the refund. Documentation may include, but shall not be limited to, a recital in the deed of conveyance indicating the person or entity that paid the fee or a copy of a fully-executed real estate settlement statement indicating the person or entity that paid the fee.

8. (New section) No impact fee shall be assessed for:

a. The construction, acquisition, improvement or expansion of public facilities or assets other than capital improvements or facility expansions which are included in the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) or section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. The repair, operation or maintenance of existing or new capital improvements or facility expansions.

c. The upgrading, expansion or replacement of existing capital improvements or capital facilities to serve existing development including, but not limited to, those actions which are necessitated by changes in performance or regulatory standards whether or not those changes are needed in order to meet more stringent safety, environmental or regulatory standards.

d. Costs associated with the construction of administrative office facilities which are greater in scope than necessary as an integral part of capital facilities authorized pursuant to P.L.    , c.     (C.     ) (pending before the Legislature as this bill).

e. The upgrading, construction, expansion or replacement of existing capital improvements to provide better service to existing development or to provide service due to levels of demand attributable to users originating from and terminating at places or uses which are not situated within the service area of the capital improvement being used.

f. The administrative and operating costs of the municipality.

g. Except as otherwise provided by P.L. , c. (C. ) (pending before the Legislature as this bill), the payment of principal and interest or other finance charges on bonds or other indebtedness.

h. The financing of any capital improvements not explicitly authorized by P.L. , c. (C. ) (pending before the Legislature as this bill).

9. (New section) a. Notwithstanding the provisions of subsection a. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) to the contrary, a municipality may finance capital improvements within service areas and collect impact fees to fund debt service payments for a period in excess of eight years after the date of collection of the final payment.

b. A developer and the municipal governing body, upon mutual agreement, may pro rate impact fees for debt service payments within service areas. In the event that debt service payments are pro rated, payments shall be collected as the developments are connected into the capital improvements for which the impact fees have been imposed.

c. With the consent of the municipal governing body, a developer may construct required capital improvements in lieu of paying all or any portion of the impact fee otherwise assessed against the developer.

d. In the event that a developer or his successor experiences unforeseen delays in completion of the development which is the subject of an impact fee assessment, the eight year limit on municipal expenditure of the impact fee moneys may be extended for the length of the delay, with the approval of the municipal governing body, which approval shall not be unreasonably withheld.

10. Section 20 of P.L.1975, c.291 (C.40:55D-29) is amended to read as follows:

20. a. The governing body of any municipality which does not authorize the preparation of a program of municipal capital improvements for the purposes of adopting an impact fee ordinance pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) may authorize the planning board from time to time to prepare a program of municipal capital improvement projects projected over a term of at least 6 years, and amendments thereto. Such program may encompass major projects being currently undertaken or future projects to be undertaken, with federal, State, county and other public funds or under federal, State or county supervision. The first year of such program shall, upon adoption by the governing body, constitute the capital budget of the municipality as required by N.J.S.40A:4-43 et seq. The program shall classify projects in regard to the urgency and need for realization, and shall recommend a time sequence for their implementation. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall, as far as possible, be based on existing information in the possession of the departments and agencies of the municipality and shall take into account public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls.

In preparing the program, the planning board shall confer, in a manner deemed appropriate by the board, with the mayor, the chief fiscal officer, other municipal officials and agencies, and the school board or boards.

Any such program shall include an estimate of the displacement of persons and establishments caused by each recommended project.

b. In addition to any of the requirements in subsection a. of this section, whenever the planning board is authorized and directed to prepare a capital improvements program, every municipal department, authority or agency shall, upon request of the planning board, transmit to said board a statement of all capital projects proposed to be undertaken by such municipal department, authority or agency, during the term of the program, for study, advice and recommendation by the planning board.

c. In addition to all of the other requirements of this section, any municipality that intends to provide for the transfer of development within its jurisdiction pursuant to section 3 of P.L.2004, c.2 (C.40:55D-139) shall include within its capital improvement program provision for those capital projects to be undertaken in the receiving zone or zones required as a condition for adopting a development transfer ordinance pursuant to subsection b. of section 4 of P.L.2004, c.2 (C.40:55D-140).

(cf: P.L.2004, c.2, s.38)

11. (New section) Prior to the adoption by the municipal governing body of an impact fee ordinance authorized pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), the planning board shall have prepared, and the governing body shall have adopted a program of municipal capital improvement projects projected over a term of six years and amendments thereto pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29). The governing body shall adopt the capital improvement program in accordance with the provisions of section 21 of P.L.1975, c.291 (C.40:55D-30). The capital improvement program shall be consistent with the municipal master plan and, for land in the Pinelands Area, with the Pinelands Comprehensive Management Plan adopted by the Pinelands Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). In addition to those provisions of the capital improvement program set forth in section 20 of P.L.1975, c.291 (C.40:55D-29), a program which serves as the basis for the imposition of an impact fee by a municipality pursuant to this section shall include:

a. a description of those capital improvements for which an impact fee is to be assessed pursuant to section 6 of P.L. , c. (C. ) pending before the Legislature as this bill), a map or maps depicting the service area of each such improvement and the costs to improve or replace those improvements in order to meet prospective demand or stricter safety, environmental or regulatory standards;

b. a description of future need for such capital improvements and facility expansions based on the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) , for which an impact fee is to be assessed pursuant to section 6 of P.L.     ,     c.    (C.     ) (pending before the Legislature as this bill);

c. a projection of the total number of service units which will result from new development anticipated in the master plan , for which an impact fee is to be assessed pursuant to section 6 of P.L. ,c. (C. ) (pending before the Legislature as this bill); and

d. a schedule establishing a specific level of quantity of use, consumption, generation or discharge of a service unit for each category of capital improvement or expansion, for which an impact fee is to be assessed pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

12. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to read as follows:

6. Hearings. a. The municipal agency shall hold a hearing on each application for development, adoption, revision or amendment of the master plan, and the capital improvement program adopted pursuant to section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill), each application for approval of an outdoor advertising sign submitted to the municipal agency as required pursuant to an ordinance adopted under subsection g. of section 29.1 of P.L.1975, c.291 (C.40:55D-39) or any review undertaken by a planning board pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

b. The municipal agency shall make the rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing, during normal business hours in the office of the administrative officer. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

c. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the "County and Municipal Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

d. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

e. Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.

f. The municipal agency shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The municipal agency shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense; provided that the governing body may provide by ordinance for the municipality to assume the expense of any transcripts necessary for appeal to the governing body, pursuant to section 8 of **[**this act**]** P.L.1975, c.291 (C.40:55D-17), of decisions by the zoning board of adjustment pursuant to subsection **[**57d.**]** d. of section 57 of **[**this act**]** P.L.1975, c.291 (C.40:55D-70), up to a maximum amount as specified by the ordinance.

The municipal agency, in furnishing a transcript or tape of the proceedings to an interested party at his expense, shall not charge such interested party more than the actual cost of preparing the transcript or tape. Transcripts shall be certified in writing by the transcriber to be accurate.

g. The municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through:

(1) A resolution adopted at a meeting held within the time period provided in the act for action by the municipal agency on the application for development; or

(2) A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval. Only the members of the municipal agency who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If only one member who voted for the action attends the meeting at which the resolution is presented for adoption, the resolution may be adopted upon the vote of that member. An action pursuant to section 5 of **[**the act**]** P.L.1975, c.291 (C.40:55D-9) (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by subsections h. and i. of this section **[**(C.40:55D-10)**]**. If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality.

h. A copy of the decision shall be mailed by the municipal agency within 10 days of the date of decision to the applicant or, if represented, then to his attorney, without separate charge, and to all who request a copy of the decision, for a reasonable fee. A copy of the decision shall also be filed by the municipal agency in the office of the administrative officer. The administrative officer shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at his office during reasonable hours.

i. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained in this act shall be construed as preventing the applicant from arranging such publication if he so desires. The municipality may make a reasonable charge for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant.

(cf: P.L.2004, c.42, s.5)

13. Section 30 of P.L.1975, c.291, (C.40:55D-42) is amended to read as follows:

30. Contribution for off-tract water, sewer, drainage, and street improvements. The governing body may by ordinance adopt regulations requiring a developer, as a condition for approval of a subdivision or site plan, to pay the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development. Such regulations shall be based on circulation and comprehensive utility service plans pursuant to subsections 19b.(4) and 19b.(5) of [this act] P.L.1975, c.291 (C.40:55D-28), respectively, and shall establish fair and reasonable standards to determine the proportionate or pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related and common area, which standards shall not be altered subsequent to preliminary approval. Where a developer pays the amount determined as his pro-rata share under protest he shall institute legal action within one year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

A governing body that has adopted an ordinance under this section may also adopt an ordinance assessing an impact fee pursuant to section 6 of P.L. , c. (C. )(pending before the Legislature as this bill) and continue to require a developer to make contributions for off-tract water, sewer, drainage and street improvements pursuant to the provisions of this section.

(cf: P.L.1998, c.95, s.8)

14. (New section) a. The governing bodies of two or more municipalities may, by substantially similar ordinances duly adopted by each governing body within six calendar months after the adoption of the first such ordinance after notice and hearing as herein required, enter into a joint agreement providing for the assessment of impact fees for development impacts which are generated in one municipality by a development situated in another municipality which is a party to the agreement, as provided hereunder.

b. The ordinance shall follow the standards and guidelines set forth in sections 6 through 9 of P.L. , c. (C. ) (pending before the Legislature as this bill). The municipalities which are a party to the agreement may jointly impose an impact fee for any or all of the expenditure areas set forth in subsection b. of section 6 of P.L.   , c.     (C.      ) (pending before the Legislature as this bill), so long as the rationale for the impact fee to be administered across municipal lines is appropriately set forth in the capital improvement plans of the municipalities which are a party to the agreement and is supported by the provisions of their respective master plans.

The ordinance shall also set forth the administrative process through which impact fees are to be jointly assessed and collected.

c. In the case of a sending-receiving relationship established between school districts pursuant to N.J.S.18A:38-8, any costs to the receiving district that may be associated with an educational facilities capital improvement required as a result of development in either the sending or receiving district may be funded or recouped through the imposition of a joint impact fee adopted pursuant to this section and the tuition charged by the receiving district shall not include any expenditures in the amount of the impact fee associated with the capital improvement. In no case shall the total of the impact fee and the State aid available to the receiving district to fund the educational facilities capital improvement exceed the cost of that improvement.

15. (New section) A developer may pay an impact fee under protest in order to obtain development approval. If a developer pays the amount determined by a municipality as the developer's impact fee under protest, the developer shall initiate an appeal pursuant to section 16 of P.L. , c. (C. ) (pending before the Legislature as this bill) within 60 days of the payment in order to preserve the right to a determination whether the required payment violates the standards of P.L. , c. (C. ) (pending before the Legislature as this bill).

16. (New section) A developer may appeal an impact fee assessed pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), which appeal shall be deemed to be a contested case and shall be submitted to the Office of Administrative Law for a hearing by an Administrative Law Judge in accordance with sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10), except that the Administrative Law Judge's decision shall have the effect of a final agency action and any appeal of that decision shall be made directly to the Appellate Division of the Superior Court.

17. Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to read as follows:

12. Except as otherwise provided by this act or in the code, before construction or alteration of any building or structure, the owner, or his agent, engineer or architect, shall submit an application in writing, including signed and sealed drawings and specifications, to the enforcing agency as defined in this act. The application shall be in accordance with regulations established by the commissioner and on a form prescribed by the commissioner and shall be accompanied by payment of the fee to be established by the municipal governing body by ordinance in accordance with standards established by the commissioner. In addition, if appropriate, the application shall include proof, by the owner, that 50% of the amount assessed as an impact fee pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) has been paid to the municipality in which the structure is situated, prior to the issuance of a construction permit. The application for a construction permit shall be filed with the enforcing agency and shall be a public record; and no application for a construction permit shall be removed from the custody of the enforcing agency after a construction permit has been issued. Nothing contained in this paragraph shall be interpreted as preventing the imposition of requirements in the code, for additional permits for particular kinds of work, including but not limited to plumbing, electrical, elevator, fire prevention equipment or boiler installation or repair work, or in other defined situations.

Upon the transfer of ownership of property that is the subject of a construction permit, and prior to beginning or continuing work authorized by the construction permit, the new owner shall file with the enforcing agency an application for a permit update to notify the enforcing agency of the name and address of the new owner and of all other changes to information previously submitted to the enforcing agency. If the municipality has adopted an ordinance requiring a successor developer to furnish a replacement performance guarantee, and a performance guarantee has previously been furnished in favor of the municipality to assure the installation of on-tract improvements on the property that is the subject of an application for a permit update for the purpose of notifying the enforcing agency of the name and address of a new owner, the enforcing agency shall not approve the application for a permit update until it receives notification from the governing body or its designee that the new owner has furnished an adequate replacement performance guarantee.

No permit shall be issued for a public school facility unless the final plans and specifications have been first approved by the Bureau of Facility Planning Services in the Department of Education or a municipal code official who is appropriately licensed by the Commissioner of Community Affairs for the type and level of plans being reviewed. Approval by the Bureau of Facility Planning Services in the Department of Education shall only be required when a review for educational adequacy is necessary. Requirements determining when a review for educational adequacy is necessary shall be established jointly by the Department of Community Affairs and the Department of Education. The standards shall thereafter be adopted as part of the Uniform Construction Code regulations by the Department of Community Affairs. After the final plans and specifications have been approved for educational adequacy by the Bureau of Facility Planning Services in the Department of Education, a local board of education may submit the final plans and specifications for code approval to either the Bureau of Facility Planning Services in the Department of Education or a municipal code official who is appropriately licensed by the Commissioner of Community Affairs for the type and level of plans being reviewed. The Bureau of Facility Planning Services in the Department of Education when approving final plans and specifications shall be responsible for insuring that the final plans and specifications conform to the requirements of the code as well as for insuring that they provide for an educationally adequate facility. In carrying out its responsibility pursuant to the provisions of this section the Department of Education shall employ persons licensed by the Commissioner of Community Affairs for the type and level of plans being reviewed.

(cf: P.L.2013, c.123, s.5)

18. Section 15 of P.L.1975, c.217 (C.52:27D-133) is amended to read as follows:

15. No building or structure hereafter constructed shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the enforcing agency. No building or structure hereafter altered, in whole or in part, shall be used or occupied until such a certificate has been issued, except that any use or occupancy in an already existing building or structure that was not discontinued during its alteration may be continued in the preexisting structure for 30 days after the completion of the alteration without the issuance of a certificate of occupancy. A certificate of occupancy shall be issued by the enforcing agency when all of the work covered by a construction permit shall have been completed in accordance with the permit, the code, and other applicable laws and ordinances and, if appropriate upon, proof that the remaining 50% of the impact fee imposed pursuant to P.L.  , c.    (C.       ) (pending before the Legislature as this bill) has been paid to the appropriate municipality by the developer. In the case of any new home subject to sales surcharge pursuant to P.L.1991, c.202 (C.46:3B-13 et al.) a certificate of occupancy shall not be issued except after presentation of a receipt, or verified duplicate thereof, from the Department of Community Affairs evidencing the payment of the surcharge. On request of a holder of a construction permit, the appropriate enforcing agency may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the construction permit has been completed, if the part or parts of the building or structure to be covered by the certificate may be occupied prior to completion of all work in accordance with the permit, the code, and other applicable laws and ordinances, without endangering the health and safety of the occupants or users. When a building or structure is entitled thereto, the enforcing agency shall issue a certificate of occupancy within 10 business days after receipt of a written application therefor in accordance with regulations established by the commissioner on a form prescribed by the commissioner accompanied by payment of a fee to be established by the municipal governing body by ordinance in accordance with standards established by the commissioner. The certificate of occupancy shall certify that the building or structure has been constructed in accordance with the provisions of the construction permit, the code, and other applicable laws and ordinances.

(cf: P.L.1991, c.202, s.8)

19. (New section) a. The Commissioner of Community Affairs shall provide technical assistance to municipalities to aid them in adopting impact fee ordinances authorized pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall also establish a permanent Development Impact Fee Review and Advisory Commission to provide ongoing technical assistance in connection with the tasks set forth below and from time to time evaluate the implementation of the various impact fee ordinances adopted by municipalities pursuant to P.L.      , c.        (C.   ) (pending before the Legislature as this bill).

The first responsibility of the commission following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be the preparation and dissemination of model ordinances to every municipality, every member of the Legislature and the Governor. In addition, the technical assistance shall consist of: the provision of advice and assistance regarding the drafting of impact fee ordinances; the development of formulas and uniform methods for the calculation of impact fees, including the definition of service units; the establishment of fee guidelines, including regional differentials in providing capital facilities throughout the State, for which impact fees may be assessed; advice relating to the preparation of plan elements and capital improvement programs related to impact fee uses; and any other assistance that is consistent with the purposes of P.L. , c.     (C.      ) (pending before the Legislature as this bill). The commission shall also draft and recommend standards for the development of capital improvement programs to assist planning boards in the preparation, and governing bodies in the adoption, of such programs pursuant to section 11 of P.L. , c.   (C.    )(pending before the Legislature as this bill). The Commissioner of Education shall provide assistance to the Commissioner of Community Affairs in the development of formulas and methods for the calculation of impact fees imposed to finance educational facilities.

The commission shall organize within 60 days following the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall thereafter meet at least monthly to provide technical assistance to municipalities as required pursuant to this subsection and to review for certification the municipal ordinances submitted to it pursuant to subsection b. of this section. The commissioner shall assign such staff support as may be needed by the commission in order for it to discharge its duties.

Meetings of the commission shall be conducted in accordance with the provisions of the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

b. The Development Impact Fee Review and Advisory Commission shall, within 90 days of the submission of an ordinance for certification, or within such further time as may be consented to by the municipality issue its determination. In the event that the commission does not certify the ordinance within said period, the ordinance shall be deemed certified upon the expiration of the 90 day period or such extended period of time as may be consented to by the municipality for purposes of the taking effect of the ordinance unless the commission shall have notified the municipal clerk of any deficiency in the ordinance which requires further modification of the ordinance on the part of the municipality.

Should the commission determine not to certify the proposed ordinance as submitted and issue a deficiency notice to the municipality, the commission shall retain jurisdiction and allow a reasonable period of time within which the municipality shall be permitted to cure any deficiency.

If the municipality elects to address the alleged deficiency, then the time frame provided for herein within which the commission must act on certification shall be extended so as to permit resubmittal of the ordinance to the commission.

If the municipality upon receipt of a notice of deficiency disagrees with the determination of the commission, then this shall be deemed a final decision by an administrative agency and the municipality shall have the right to appeal the determination as provided for by law.

If the municipality disagrees with the determination of the commission or elects not to address any alleged deficiency identified by the commission, the municipality shall not impose an impact fee. If a municipality elects to appeal a decision of the commission, it shall not impose an impact fee pending the outcome of the appeal.

The commission shall be guided in its determination by the reasonableness of the fee, the adherence of the ordinance to the provisions of the model ordinances issued by the commission, the formulas and uniform methods for the calculation of impact fees, fee guidelines and other standards and guidelines developed by the commission to assist municipalities in developing impact fee ordinances, and the relationship of the ordinance to the master plan, capital improvement program and long-range facilities plan adopted by the municipality or school board, as the case may be, and submitted along with the ordinance as the justification for the impact fee assessment.

c. The Development Impact Fee Review and Advisory Commission established pursuant to subsection a. of this section shall consist of 15 members, all of whom shall be voting members, as follows: the Commissioner of Community Affairs or the commissioner's designee who shall serve as the commission chair and the Commissioner of Education or the commissioner's designee. The remaining 13 members shall be appointed by the Governor, with the advice and consent of the Senate, within 30 days following the submission of three names for each appointment by each of the following organizations, each of which shall consider the need for political and geographical balance in the appointment by the Governor of commission members, as follows: one member representing the New Jersey State League of Municipalities; one member representing the New Jersey School Boards Association; one member representing the New Jersey Association of School Business Officials; one member representing the New Jersey Planning Officials; two members representing the New Jersey Builders Association; one member representing the New Jersey chapter of the National Association of Industrial and Office Properties; one member representing the New Jersey Society of Municipal Engineers; one member representing the New Jersey Society of Professional Engineers; one member of the New Jersey Institute of Local Government Attorneys; and one member of the New Jersey State Bar Association. In addition, two public members shall be appointed who shall be residents of the State and who shall not be employed by any level of government, the development industry or an affiliate thereof.

Not more than seven of the 13 public members shall be members of the same political party. To the greatest extent practicable, the membership shall be balanced geographically.

Commission members appointed by the Governor shall serve for a three year term, except that of the members first appointed, six shall serve for a term of three years, five shall serve for a term of two years, and two shall serve for a term of one year. Members first appointed shall draw lots to determine the length of their term, except that the initial terms of the members representing the New Jersey Builders Association shall be staggered. Members shall be eligible for reappointment.

Members who are not government employees shall receive reasonable compensation on a per diem basis in an amount to be determined by the commissioner, and shall be reimbursed for necessary expenses actually incurred in the performance of their duties.

A majority of the membership of the commission shall constitute a quorum except that no action may be taken by the commission except upon the affirmative vote of a majority of the total membership of the commission.

20. (New section) The Commissioner of Education shall provide assistance to the Development Impact Fee Review and Advisory Commission established pursuant to subsection b. of section 19 of P.L. , c. (C. ) (pending before the Legislature as this bill) in developing guidelines to assist municipalities in the calculation of impact fee assessments for educational facilities.

21. (New section) a. Commencing on March 31st next following the promulgation of the first model ordinance and every twelve months thereafter, the commission shall issue a report which it shall circulate to the Governor and every member of the Legislature regarding the certification of impact fee ordinances. Specifically, the report shall include the number of ordinances submitted for certification, which of those ordinances are accepted for certification, the types of capital improvements for which impact fees are being assessed, a listing of the applications which are subject to the impact fee assessment in each municipality and the amount of the assessment on each development, a listing of those deficiency notices issued by the commission pursuant to subsection b. of section 19 of P.L. , c. (C. ) (pending before the Legislature as this bill) and the reasons for those determinations, and any appeals of commission determinations which have been filed by municipalities, as authorized pursuant thereto.

b. While it is the Legislature's intent to assist municipalities in addressing the capital improvement needs associated with new development, the Legislature is cognizant of the importance of the homebuilding industry to the creation of jobs and the provision of affordable housing in the growth areas of the State. If the Legislature finds that the impact fees being assessed by municipalities are onerous and create unreasonable upward pressure on the price of new housing in municipalities that assess impact fees, the Legislature may be compelled to impose limitations on those fees which may be assessed by municipalities in subsequent enactments.

22. (New section) a. Any application for development which has received preliminary approval prior to the adoption of an ordinance pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be subject to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Any contract which has been entered into or any conditions of development approval which have been agreed to by a developer and approving authority prior to the effective date of P.L.     , c.     (C.      ) (pending before the Legislature as this bill), evidenced by written documentation attesting to the signed contract or agreement or by a memorializing resolution formalizing the approval, shall not be invalidated by any provision of P.L.    , c.    (C.       ) (pending before the Legislature as this bill), shall not be subject to review under the provisions of any ordinance which is adopted pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), and shall not be subject to appeal pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill).

c. Any contract which has been entered into or any conditions of development approval which have been agreed to by a developer and approving authority prior to the effective date of P.L.     , c. (C. ) (pending before the Legislature as this bill), evidenced by written documentation attesting to the signed contract or agreement or by a memorializing resolution formalizing the approval, shall not be invalidated on the basis of noncompliance with the provisions of section 30 of P.L.1975, c.291 (C.40:55D-42), P.L.1989, c.100 (C.27:1C-1 et al.), P.L.1985, c.222 (C.52:27D-301 et al.), or any other law which authorizes the assessment of development fees.

23. There is hereby appropriated to the Department of Community Affairs from the General Fund the sum of $250,000 to cover the costs of staffing the Development Impact Review and Advisory Commission.

24. This act shall take effect immediately.

STATEMENT

This bill, known as the "Municipal Development Impact Fee Authorization Act," would allow municipalities to impose an impact fee on developers under certain circumstances.

A municipality which imposes an impact fee must do so by an ordinance which sets forth detailed standards and guidelines regarding the definition of a service unit and the specific purposes for which the impact fee revenues may be expended. The impact fee ordinance shall also contain a delineation of service areas for each capital improvement and a fee schedule which clearly sets forth the amount of the fee to be charged for each service unit.

Municipalities may impose an impact fee to cover a broad range of expenditure areas, including any transportation improvement necessitated by new development in a county not covered by a transportation development district created pursuant to the "New Jersey Transportation Development District Act of 1989," water treatment and distribution, wastewater treatment and sewerage, flood control and stormwater management, educational facilities, municipal parks and recreation facilities, public safety and related facilities. The bill exempts low and moderate income housing units as defined under P.L.1985, c.222 (C.52:27D-301 et al.) from the assessment of impact fees and prohibits the internal subsidy within inclusionary developments which would otherwise see purchasers of market-priced units absorb the impact fees forgiven on their affordable counterparts.

Capital improvements and facility expansion for which an impact fee is imposed must bear a reasonable relationship to needs created by the new development. A municipality may adopt such an impact fee ordinance only if it has previously adopted a capital improvement program and has a valid master plan in place. The capital improvement program referred to here is more detailed than that which is currently authorized under section 20 of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-29). An impact fee imposed to finance educational facilities shall be based upon a long-term facilities plan approved by the Commissioner of Education.

Municipalities which choose not to implement an impact fee ordinance under this bill may continue to prepare the less comprehensive capital improvement program currently authorized under the "Municipal Land Use Law." Similarly, those municipalities may continue to levy a fee for off-tract improvements authorized under section 30 of P.L.1975, c.291 (C.40:55D-42).

The bill sets forth terms and conditions under which municipalities may assess and hold onto impact fee revenues. Fifty percent of the amount assessed as an impact fee shall be paid prior to the issuance of a construction permit and the remainder, prior to the issuance of the certificate of occupancy. No impact fee imposed by a municipality shall exceed the development's proportional share of the current reasonable cost of constructing the capital improvement or facility expansion for which the fee is being assessed. In no case shall the municipality maintain unexpended impact fees for more than eight years after the date of collection of the final payment for any development, unless construction has already begun on the capital improvement of facility expansion for which the impact fees were collected.

The bill provides for an appeal of an impact fee assessment to an administrative law judge under the "Administrative Procedure Act" as a contested case; unlike decisions of contested cases under the APA, however, decisions of an administrative law judge in these cases would be final and would be appealable directly to the Appellate Division of Superior Court.

The bill establishes a permanent 15 member Development Impact Fee Review and Advisory Commission (DIFRAC) in the Department of Community Affairs to provide ongoing technical assistance to municipalities in adopting impact fee ordinances and to evaluate the implementation of those ordinances. The first responsibility of DIFRAC shall be the preparation and dissemination of model ordinance. All municipal development impact fee ordinances must be certified by DIFRAC as to their conformity with law and the standards adopted by the commission.