

SENATE, No. 2508

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 5, 2024

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.



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

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

8
9 1. (New section) Sections 1, 2, 6 through 9, 11, 14 through 16
10 and 19 through 22 shall be known and may be cited as the
11 "Municipal Development Impact Fee Authorization Act."

12
13 2. (New section) The Legislature finds and declares that:

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

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

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

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

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

41
42 3. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to
43 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 appropriate for the use or enjoyment of residents and owners of the
2 development.

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

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

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

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

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

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

31 "County planning board" means the county planning board, as
32 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
33 in which the land or development is located.
34 (cf: P.L.2013, c.106, s.2)

35

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

38 3.1. "Days" means calendar days.

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

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

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

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

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

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

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

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

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

38 "Electric vehicle supply equipment" or "electric vehicle service
39 equipment" or "EVSE" means the equipment, including the cables,
40 cords, conductors, connectors, couplers, enclosures, attachment
41 plugs, power outlets, power electronics, transformer, switchgear,
42 switches and controls, network interfaces, and point of sale
43 equipment and associated apparatus designed and used for the
44 purpose of transferring energy from the electric supply system to a
45 plug-in electric vehicle. "EVSE" may deliver either alternating
46 current or, consistent with fast charging equipment standards, direct
47 current electricity. "EVSE" is synonymous with "electric vehicle
48 charging station."

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

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

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

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

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

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

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

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

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

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

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

46 "Individual unit of development" means a dwelling unit in the
47 case of a residential development, a square foot in the case of a non-
48 residential development or any other standard employed by a

1 municipality for different categories of development as a basis upon
2 which to establish a service unit.

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

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

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

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

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

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

36 (cf: P.L.2021, c.171, s.5)

37

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

40 3.4. "Sedimentation" means the deposition of soil that has been
41 transported from its site of origin by water, ice, wind, gravity or
42 other natural means as a product of erosion.

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

48 "Service area" means that area to be served by the capital

1 improvement or facility expansion as designated in the capital
2 improvement program adopted by a municipality under section 11
3 of P.L. , c. (C.) (pending before the Legislature as this
4 bill).

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

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

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

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

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

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

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

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

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

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

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

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

41

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

48 An impact fee ordinance adopted pursuant to this section may

1 apply to all major site plans or subdivisions submitted within the
2 municipality. Alternatively, any municipality may include within
3 its ordinance a threshold limiting the assessment of an impact fee to
4 developments of above a certain size.

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

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

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

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

1 pursuant to law or regulation.

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

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

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

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

44 If the municipality determines that there will be any interest or
45 other charges incurred by, or to be incurred by, the municipality in
46 constructing any capital improvement or facility expansion prior to
47 receiving payment of any impact fee assessed against a developer,
48 then the municipality may charge or factor into the calculation of

1 the impact fee the interest or other charges, provided, however, that
2 all of the interest, other charges and the developer's impact fee
3 payment for capital improvements or facility expansion shall not
4 exceed 120% of the cost of the capital improvement or facility
5 expansion being borne by the developer.

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

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

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

39

40 7. (New section) a. No impact fee imposed by a municipality
41 shall be in an amount exceeding the development's proportional
42 share of the current reasonable cost of constructing the capital
43 improvement or facility expansion for which the fee is being
44 assessed. Any impact fee revenue that is not applied immediately
45 to the purpose for which it was collected shall be deposited in a
46 banking institution or savings and loan association in this State
47 insured by an agency of the federal government, or in any other
48 fund or depository approved for such deposits by the State, in a

1 special infrastructure trust fund bearing interest at minimum rate
2 currently paid by the institution or depository on time or savings
3 deposits. Impact fees shall be segregated and designated according
4 to the capital improvements for which those fees were assessed.
5 Impact fees shall not be deemed to be general revenues of the
6 municipality.

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

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

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

31

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

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

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

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

47 d. Costs associated with the construction of administrative
48 office facilities which are greater in scope than necessary as an

1 integral part of capital facilities authorized pursuant to
2 P.L. , c. (C.) (pending before the Legislature as this bill).

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

9 f. The administrative and operating costs of the municipality.

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

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

16

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

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

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

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

40

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

43 20. a. The governing body of any municipality which does not
44 authorize the preparation of a program of municipal capital
45 improvements for the purposes of adopting an impact fee ordinance
46 pursuant to section 6 of P.L. , c. (C.) (pending before the
47 Legislature as this bill) may authorize the planning board from time
48 to time to prepare a program of municipal capital improvement

1 projects projected over a term of at least 6 years, and amendments
2 thereto. Such program may encompass major projects being
3 currently undertaken or future projects to be undertaken, with
4 federal, State, county and other public funds or under federal, State
5 or county supervision. The first year of such program shall, upon
6 adoption by the governing body, constitute the capital budget of the
7 municipality as required by N.J.S.40A:4-43 et seq. The program
8 shall classify projects in regard to the urgency and need for
9 realization, and shall recommend a time sequence for their
10 implementation. The program may also contain the estimated cost
11 of each project and indicate probable operating and maintenance
12 costs and probable revenues, if any, as well as existing sources of
13 funds or the need for additional sources of funds for the
14 implementation and operation of each project. The program shall, as
15 far as possible, be based on existing information in the possession
16 of the departments and agencies of the municipality and shall take
17 into account public facility needs indicated by the prospective
18 development shown in the master plan of the municipality or as
19 permitted by other municipal land use controls.

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

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

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

35 c. In addition to all of the other requirements of this section,
36 any municipality that intends to provide for the transfer of
37 development within its jurisdiction pursuant to section 3 of
38 P.L.2004, c.2 (C.40:55D-139) shall include within its capital
39 improvement program provision for those capital projects to be
40 undertaken in the receiving zone or zones required as a condition
41 for adopting a development transfer ordinance pursuant to
42 subsection b. of section 4 of P.L.2004, c.2 (C.40:55D-140).
43 (cf: P.L.2004, c.2, s.38)

44

45 11. (New section) Prior to the adoption by the municipal
46 governing body of an impact fee ordinance authorized pursuant to
47 section 6 of P.L. , c. (C.) (pending before the Legislature as
48 this bill), the planning board shall have prepared, and the governing

1 body shall have adopted a program of municipal capital
2 improvement projects projected over a term of six years and
3 amendments thereto pursuant to section 20 of P.L.1975, c.291
4 (C.40:55D-29). The governing body shall adopt the capital
5 improvement program in accordance with the provisions of section
6 21 of P.L.1975, c.291 (C.40:55D-30). The capital improvement
7 program shall be consistent with the municipal master plan and, for
8 land in the Pinelands Area, with the Pinelands Comprehensive
9 Management Plan adopted by the Pinelands Commission pursuant
10 to P.L.1979, c.111 (C.13:18A-1 et seq.). In addition to those
11 provisions of the capital improvement program set forth in section
12 20 of P.L.1975, c.291 (C.40:55D-29), a program which serves as
13 the basis for the imposition of an impact fee by a municipality
14 pursuant to this section shall include:

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

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

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

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

35
36 12. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to
37 read as follows:

38 6. Hearings. a. The municipal agency shall hold a hearing on
39 each application for development, adoption, revision or amendment
40 of the master plan, and the capital improvement program adopted
41 pursuant to section 11 of P.L. , c. (C.) (pending before the
42 Legislature as this bill), each application for approval of an outdoor
43 advertising sign submitted to the municipal agency as required
44 pursuant to an ordinance adopted under subsection g. of section
45 29.1 of P.L.1975, c.291 (C.40:55D-39) or any review undertaken by
46 a planning board pursuant to section 22 of P.L.1975, c.291
47 (C.40:55D-31).

1 b. The municipal agency shall make the rules governing such
2 hearings. Any maps and documents for which approval is sought at
3 a hearing shall be on file and available for public inspection at least
4 10 days before the date of the hearing, during normal business
5 hours in the office of the administrative officer. The applicant may
6 produce other documents, records, or testimony at the hearing to
7 substantiate or clarify or supplement the previously filed maps and
8 documents.

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

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

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

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

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

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

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

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

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

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

1 run from the first publication of the decision, whether arranged by
2 the municipality or the applicant.

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

4
5 13. Section 30 of P.L.1975, c.291, (C.40:55D-42) is amended to
6 read as follows:

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

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

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

34
35 14. (New section) a. The governing bodies of two or more
36 municipalities may, by substantially similar ordinances duly
37 adopted by each governing body within six calendar months after
38 the adoption of the first such ordinance after notice and hearing as
39 herein required, enter into a joint agreement providing for the
40 assessment of impact fees for development impacts which are
41 generated in one municipality by a development situated in another
42 municipality which is a party to the agreement, as provided
43 hereunder.

44 b. The ordinance shall follow the standards and guidelines set
45 forth in sections 6 through 9 of P.L. , c. (C.) (pending before the
46 Legislature as this bill). The municipalities which are a party to the
47 agreement may jointly impose an impact fee for any or all of the
48 expenditure areas set forth in subsection b. of section 6 of

1 P.L. , c. (C.) (pending before the Legislature as this bill), so
2 long as the rationale for the impact fee to be administered across
3 municipal lines is appropriately set forth in the capital improvement
4 plans of the municipalities which are a party to the agreement and is
5 supported by the provisions of their respective master plans.

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

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

20
21 15. (New section) A developer may pay an impact fee under
22 protest in order to obtain development approval. If a developer
23 pays the amount determined by a municipality as the developer's
24 impact fee under protest, the developer shall initiate an appeal
25 pursuant to section 16 of P.L. , c. (C.) (pending before the
26 Legislature as this bill) within 60 days of the payment in order to
27 preserve the right to a determination whether the required payment
28 violates the standards of P.L. , c. (C.) (pending before the
29 Legislature as this bill).

30
31 16. (New section) A developer may appeal an impact fee
32 assessed pursuant to P.L. , c. (C.) (pending before the
33 Legislature as this bill), which appeal shall be deemed to be a
34 contested case and shall be submitted to the Office of
35 Administrative Law for a hearing by an Administrative Law Judge
36 in accordance with sections 9 and 10 of P.L.1968, c.410
37 (C.52:14B-9 and 52:14B-10), except that the Administrative Law
38 Judge's decision shall have the effect of a final agency action and
39 any appeal of that decision shall be made directly to the Appellate
40 Division of the Superior Court.

41
42 17. Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to
43 read as follows:

44 12. Except as otherwise provided by this act or in the code,
45 before construction or alteration of any building or structure, the
46 owner, or his agent, engineer or architect, shall submit an
47 application in writing, including signed and sealed drawings and
48 specifications, to the enforcing agency as defined in this act. When

1 an enforcing agency begins to participate in the "Electronic Permit
2 Processing Review System," pursuant to section 1 of P.L.2021, c.70
3 (C.52:27D-124.4), the owner, or his agent, engineer or architect,
4 may submit applications and scheduling requests electronically.
5 The application shall be in accordance with regulations established
6 by the commissioner and on a form or in a format prescribed by the
7 commissioner and shall be accompanied by payment of the fee to be
8 established by the municipal governing body by ordinance in
9 accordance with standards established by the commissioner. In
10 addition, if appropriate, the application shall include proof, by the
11 owner, that 50% of the amount assessed as an impact fee pursuant
12 to section 6 of P.L. , c. (C.) (pending before the Legislature as
13 this bill) has been paid to the municipality in which the structure is
14 situated, prior to the issuance of a construction permit. The
15 application for a construction permit shall be filed with the
16 enforcing agency and shall be a public record; and no application
17 for a construction permit shall be removed from the custody of the
18 enforcing agency after a construction permit has been issued.
19 Nothing contained in this paragraph shall be interpreted as
20 preventing the imposition of requirements in the code, for
21 additional permits for particular kinds of work, including but not
22 limited to plumbing, electrical, elevator, fire prevention equipment
23 or boiler installation or repair work, or in other defined situations.

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

41 No permit shall be issued for a public school facility unless the
42 final plans and specifications have been first approved by the
43 Bureau of Facility Planning Services in the Department of
44 Education or a municipal code official who is appropriately licensed
45 by the Commissioner of Community Affairs for the type and level
46 of plans being reviewed. Approval by the Bureau of Facility
47 Planning Services in the Department of Education shall only be
48 required when a review for educational adequacy is necessary.

1 Requirements determining when a review for educational adequacy
2 is necessary shall be established jointly by the Department of
3 Community Affairs and the Department of Education. The
4 standards shall thereafter be adopted as part of the Uniform
5 Construction Code regulations by the Department of Community
6 Affairs. After the final plans and specifications have been approved
7 for educational adequacy by the Bureau of Facility Planning
8 Services in the Department of Education, a local board of education
9 may submit the final plans and specifications for code approval to
10 either the Bureau of Facility Planning Services in the Department of
11 Education or a municipal code official who is appropriately licensed
12 by the Commissioner of Community Affairs for the type and level
13 of plans being reviewed. The Bureau of Facility Planning Services
14 in the Department of Education when approving final plans and
15 specifications shall be responsible for insuring that the final plans
16 and specifications conform to the requirements of the code as well
17 as for insuring that they provide for an educationally adequate
18 facility. In carrying out its responsibility pursuant to the provisions
19 of this section the Department of Education shall employ persons
20 licensed by the Commissioner of Community Affairs for the type
21 and level of plans being reviewed.

22 (cf: P.L.2021, c.70, s.4)

23

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

26 15. No building or structure hereafter constructed shall be used
27 or occupied in whole or in part until a certificate of occupancy shall
28 have been issued by the enforcing agency. No building or structure
29 hereafter altered, in whole or in part, shall be used or occupied until
30 such a certificate has been issued, except that any use or occupancy
31 in an already existing building or structure that was not
32 discontinued during its alteration may be continued in the
33 preexisting structure for 30 days after the completion of the
34 alteration without the issuance of a certificate of occupancy. A
35 certificate of occupancy shall be issued by the enforcing agency
36 when all of the work covered by a construction permit shall have
37 been completed in accordance with the permit, the code, and other
38 applicable laws and ordinances and, if appropriate upon, proof that
39 the remaining 50% of the impact fee imposed pursuant to
40 P.L. , c. (C.) (pending before the Legislature as this bill) has
41 been paid to the appropriate municipality by the developer. In the
42 case of any new home subject to sales surcharge pursuant to
43 P.L.1991, c.202 (C.46:3B-13 et al.) a certificate of occupancy shall
44 not be issued except after presentation of a receipt, or verified
45 duplicate thereof, from the Department of Community Affairs
46 evidencing the payment of the surcharge. On request of a holder of
47 a construction permit, the appropriate enforcing agency may issue a
48 temporary certificate of occupancy for a building or structure, or

1 part thereof, before the entire work covered by the construction
2 permit has been completed, if the part or parts of the building or
3 structure to be covered by the certificate may be occupied prior to
4 completion of all work in accordance with the permit, the code, and
5 other applicable laws and ordinances, without endangering the
6 health and safety of the occupants or users. When a building or
7 structure is entitled thereto, the enforcing agency shall issue a
8 certificate of occupancy within 10 business days after receipt of a
9 written application therefor in accordance with regulations
10 established by the commissioner on a form prescribed by the
11 commissioner accompanied by payment of a fee to be established
12 by the municipal governing body by ordinance in accordance with
13 standards established by the commissioner. The certificate of
14 occupancy shall certify that the building or structure has been
15 constructed in accordance with the provisions of the construction
16 permit, the code, and other applicable laws and ordinances.

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

18

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

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

1 to the Commissioner of Community Affairs in the development of
2 formulas and methods for the calculation of impact fees imposed to
3 finance educational facilities.

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

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

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

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

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

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

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

46 The commission shall be guided in its determination by the
47 reasonableness of the fee, the adherence of the ordinance to the
48 provisions of the model ordinances issued by the commission, the

1 formulas and uniform methods for the calculation of impact fees,
2 fee guidelines and other standards and guidelines developed by the
3 commission to assist municipalities in developing impact fee
4 ordinances, and the relationship of the ordinance to the master plan,
5 capital improvement program and long-range facilities plan
6 adopted by the municipality or school board, as the case may be,
7 and submitted along with the ordinance as the justification for the
8 impact fee assessment.

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

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

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

47 Members who are not government employees shall receive
48 reasonable compensation on a per diem basis in an amount to be

1 determined by the commissioner, and shall be reimbursed for
2 necessary expenses actually incurred in the performance of their
3 duties.

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

8
9 20. (New section) The Commissioner of Education shall
10 provide assistance to the Development Impact Fee Review and
11 Advisory Commission established pursuant to subsection b. of
12 section 19 of P.L. , c. (C.) (pending before the Legislature
13 as this bill) in developing guidelines to assist municipalities in the
14 calculation of impact fee assessments for educational facilities.

15
16 21. (New section) a. Commencing on March 31st next
17 following the promulgation of the first model ordinance and every
18 twelve months thereafter, the commission shall issue a report which
19 it shall circulate to the Governor and every member of the
20 Legislature regarding the certification of impact fee ordinances.
21 Specifically, the report shall include the number of ordinances
22 submitted for certification, which of those ordinances are accepted
23 for certification, the types of capital improvements for which
24 impact fees are being assessed, a listing of the applications which
25 are subject to the impact fee assessment in each municipality and
26 the amount of the assessment on each development, a listing of
27 those deficiency notices issued by the commission pursuant to
28 subsection b. of section 19 of P.L. , c. (C.) (pending
29 before the Legislature as this bill) and the reasons for those
30 determinations, and any appeals of commission determinations
31 which have been filed by municipalities, as authorized pursuant
32 thereto.

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

44
45 22. (New section) a. Any application for development which
46 has received preliminary approval prior to the adoption of an
47 ordinance pursuant to section 6 of P.L. , c. (C.) (pending
48 before the Legislature as this bill) shall not be subject to the

1 provisions of P.L. , c. (C.) (pending before the Legislature
2 as this bill).

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

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

27

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

32

33 24. This act shall take effect immediately.

34

35

36

STATEMENT

37

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

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

48 Municipalities may impose an impact fee to cover a broad range

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

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

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

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

45 The bill provides for an appeal of an impact fee assessment to an
46 administrative law judge under the "Administrative Procedure Act"
47 as a contested case; unlike decisions of contested cases under the
48 APA, however, decisions of an administrative law judge in these

1 cases would be final and would be appealable directly to the
2 Appellate Division of Superior Court.

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