

# ASSEMBLY, No. 1383

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the "Municipal Land Use Law," designated as  
2 the Equitable Disclosure Act of 2010, amending and  
3 supplementing P.L.1975, c.291 and amending P.L.1977, c.336.  
4

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

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

10 3.1. "Days" means calendar days.

11 "Density" means the permitted number of dwelling units per  
12 gross area of land to be developed.

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

18 "Development" means the division of a parcel of land into two or  
19 more parcels, the construction, reconstruction, conversion,  
20 structural alteration, relocation or enlargement of any building or  
21 other structure, or of any mining excavation or landfill, and any use  
22 or change in the use of any building or other structure, or land or  
23 extension of use of land, for which permission may be required  
24 pursuant to this act.

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

31 "Development regulation" means a zoning ordinance,  
32 subdivision ordinance, site plan ordinance, official map ordinance  
33 or other municipal regulation of the use and development of land, or  
34 amendment thereto adopted and filed pursuant to this act.

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

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

42 "Drainage" means the removal of surface water or groundwater  
43 from land by drains, grading or other means and includes control of  
44 runoff during and after construction or development to minimize  
45 erosion and sedimentation, to assure the adequacy of existing and

**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 proposed culverts and bridges, to induce water recharge into the  
2 ground where practical, to lessen nonpoint pollution, to maintain  
3 the integrity of stream channels for their biological functions as  
4 well as for drainage, and the means necessary for water supply  
5 preservation or prevention or alleviation of flooding.

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

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

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

16 "Floor area ratio" means the sum of the area of all floors of  
17 buildings or structures compared to the total area of the site.

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

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

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

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

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

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

39 "Interested party" means:

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

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

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

46 (ii) any other person, whether residing within or without the  
47 municipality, whose right to use, acquire, or enjoy property is or

1 may be affected by any action taken under this act, or whose rights  
2 to use, acquire, or enjoy property under this act, or under any other  
3 law of this State or of the United States have been denied, violated  
4 or infringed by an action or a failure to act under this act; however,  
5 a person, including but not limited to that person's employees,  
6 agents, representatives, affiliates, or third party designees, shall not  
7 be an interested party unless the person discloses how the person's  
8 right to use, acquire, or enjoy property is or may be affected by any  
9 action taken on the application, in some way other than by  
10 increased economic competition.

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

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

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

25 (cf: P.L.2009, c.146, s.1)

26

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

29 3.2. "Maintenance guarantee" means any security which may be  
30 accepted by a municipality for the maintenance of any  
31 improvements required by this act, including but not limited to  
32 surety bonds, letters of credit under the circumstances specified in  
33 section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

34 "Major subdivision" means any subdivision not classified as a  
35 minor subdivision.

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

40 "Mayor" means the chief executive of the municipality, whatever  
41 his official designation may be, except that in the case of  
42 municipalities governed by municipal council and municipal  
43 manager the term "mayor" shall not mean the "municipal manager"  
44 but shall mean the mayor of such municipality.

45 "Military facility" means any facility located within the State  
46 which is owned or operated by the federal government, and which is  
47 used for the purposes of providing logistical, technical, material,

1 training, and any other support to any branch of the United States  
2 military.

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

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

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

20 "Municipality" means any city, borough, town, township or  
21 village.

22 "Municipal agency" means a municipal planning board or board  
23 of adjustment, or a governing body of a municipality when acting  
24 pursuant to this act and any agency which is created by or  
25 responsible to one or more municipalities when such agency is  
26 acting pursuant to this act.

27 "Municipal resident" means a person who is domiciled in the  
28 municipality.

29 "Nonconforming lot" means a lot, the area, dimension or location  
30 of which was lawful prior to the adoption, revision or amendment of  
31 a zoning ordinance, but fails to conform to the requirements of the  
32 zoning district in which it is located by reason of such adoption,  
33 revision or amendment.

34 "Nonconforming structure" means a structure the size, dimension  
35 or location of which was lawful prior to the adoption, revision or  
36 amendment of a zoning ordinance, but which fails to conform to the  
37 requirements of the zoning district in which it is located by reasons  
38 of such adoption, revision or amendment.

39 "Nonconforming use" means a use or activity which was lawful  
40 prior to the adoption, revision or amendment of a zoning ordinance,  
41 but which fails to conform to the requirements of the zoning district  
42 in which it is located by reasons of such adoption, revision or  
43 amendment.

44 "Non-profit organization" means a non-profit corporation, non-  
45 profit partnership, charitable trust or conservancy, or other non-  
46 profit or not-for-profit entity.

1 "Office of Smart Growth" means the Office of State Planning  
2 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-  
3 201).

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

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

10 "Offsite" means located outside the lot lines of the lot in question  
11 but within the property, of which the lot is a part, which is the  
12 subject of a development application or the closest half of the street  
13 or right-of-way abutting the property of which the lot is a part.

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

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

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

22 "Open-space" means any parcel or area of land or water  
23 essentially unimproved and set aside, dedicated, designated or  
24 reserved for public or private use or enjoyment or for the use and  
25 enjoyment of owners and occupants of land adjoining or  
26 neighboring such open space; provided that such areas may be  
27 improved with only those buildings, structures, streets and offstreet  
28 parking and other improvements that are designed to be incidental  
29 to the natural openness of the land.

30 "Organization" means a corporation, partnership, trust, limited  
31 liability company, limited liability partnership, limited partnership,  
32 or any other for-profit entity.

33 (cf: P.L.2005, c.41, s.2)

34

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

37 7. Notices pursuant to section 7.1 and 7.2 of **[this act]**  
38 P.L.1975, c.291 (C.40:55D-12 and C.40:55D-13) shall state the  
39 date, time and place of the hearing, the nature of the matters to be  
40 considered and, in the case of notices pursuant to **[subsection]**  
41 section 7.1 of **[this act]** P.L.1975, c.291 (C.40:55D-12), an  
42 identification of the property proposed for development by street  
43 address, if any, or by reference to lot and block numbers as shown  
44 on the current tax duplicate in the municipal tax assessor's office,  
45 and the location and times at which any maps and documents for  
46 which approval is sought are available pursuant to subsection **[6b]**  
47 b. of section 6 of P.L.1975, c.291 (C.40:55D-10). Notices pursuant

1 to section 7.1 of P.L.1975, c.291 (C.40:55D-12) shall reference the  
2 disclosure requirements of subsection d. of section 1 of P.L.1977,  
3 c.336 (C.40:55D-48.1), and state that the disclosure requirements  
4 shall be satisfied at the time of making an appearance and prior to  
5 cross-examining any of the applicant's witnesses or providing  
6 testimony on the application at the hearing.

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

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

11 8. Appeal to the governing body; time; notice; modification;  
12 stay of proceedings. a. Any interested party may appeal to the  
13 governing body any final decision of a board of adjustment  
14 approving an application for development pursuant to subsection d.  
15 of section 57 of P.L.1975, c.291 (C.40:55D-70), if so permitted by  
16 ordinance. Such appeal shall be made within 10 days of the date of  
17 publication of such final decision pursuant to subsection i. of  
18 section 6 of P.L.1975, c.291 (C.40:55D-10). In the case of any  
19 board established pursuant to article 10 of P.L.1975, c.291, the  
20 governing body of the municipality in which the land is situated  
21 shall be the "governing body" for purposes of this section. The  
22 appeal to the governing body shall be made by serving the  
23 municipal clerk in person or by certified mail with a notice of  
24 appeal, specifying the grounds thereof and the name and address of  
25 the appellant and name and address of his attorney, if represented.  
26 Such appeal shall be decided by the governing body only upon the  
27 record established before the board of adjustment.

28 b. Notice of the meeting to review the record below shall be  
29 given by the governing body by personal service or certified mail to  
30 the appellant, to those entitled to notice of a decision pursuant to  
31 subsection h. of section 6 of P.L.1975, c.291 (C.40:55D-10) and to  
32 the board from which the appeal is taken, at least 10 days prior to  
33 the date of the meeting. The parties may submit oral and written  
34 argument on the record at such meeting, and the governing body  
35 shall provide for verbatim recording and transcripts of such meeting  
36 pursuant to subsection f. of section 6 of P.L.1975, c.291 (C.40:55D-  
37 10).

38 c. The appellant shall, (1) within five days of service of the  
39 notice of the appeal pursuant to subsection a. hereof, arrange for a  
40 transcript pursuant to subsection f. of section 6 of P.L.1975, c.291  
41 (C.40:55D-10) for use by the governing body and pay a deposit of  
42 \$50.00 or the estimated cost of such transcript, whichever is less, or  
43 (2) within 35 days of service of the notice of appeal, submit a  
44 transcript as otherwise arranged to the municipal clerk; otherwise,  
45 the appeal may be dismissed for failure to prosecute.

46 The governing body shall conclude a review of the record below  
47 not later than 95 days from the date of publication of notice of the

1 decision below pursuant to subsection i. of section 6 of P.L.1975,  
2 c.291 (C.40:55D-10), unless the applicant consents in writing to an  
3 extension of such period. Failure of the governing body to hold a  
4 hearing and conclude a review of the record below and to render a  
5 decision within such specified period shall constitute a decision  
6 affirming the action of the board.

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

12 e. The affirmative vote of a majority of the full authorized  
13 membership of the governing body shall be necessary to reverse or  
14 remand to the board of adjustment or to impose conditions on or  
15 alter conditions to any final action of the board of adjustment.  
16 Otherwise the final action of the board of adjustment shall be  
17 deemed to be affirmed; a tie vote of the governing body shall  
18 constitute affirmance of the decision of the board of adjustment.

19 f. An appeal to the governing body shall stay all proceedings  
20 in furtherance of the action in respect to which the decision  
21 appealed from was made, unless the board from whose action the  
22 appeal is taken certifies to the governing body, after the notice of  
23 appeal shall have been filed with such board, that by reason of facts  
24 stated in the certificate, a stay would, in its opinion, cause imminent  
25 peril to life or property. In such case, proceedings shall not be  
26 stayed other than by an order of the Superior Court on application  
27 upon notice to the board from whom the appeal is taken and on  
28 good cause shown.

29 g. The governing body shall mail a copy of the decision to the  
30 appellant or, if represented, then to his attorney, without separate  
31 charge, and for a reasonable charge to any interested party who has  
32 requested it, not later than 10 days after the date of the decision. A  
33 brief notice of the decision shall be published in the official  
34 newspaper of the municipality, if there be one, or in a newspaper of  
35 general circulation in the municipality. Such publication shall be  
36 arranged by the applicant unless a particular municipal officer is so  
37 designated by ordinance; provided that nothing contained herein  
38 shall be construed as preventing the applicant from arranging such  
39 publication if he so desires. The governing body may make a  
40 reasonable charge for its publication. The period of time in which  
41 an appeal to a court of competent jurisdiction may be made shall  
42 run from the first publication, whether arranged by the municipality  
43 or the applicant.

44 h. Nothing in this act shall be construed to restrict the right of  
45 any interested party to obtain a review by any court of competent  
46 jurisdiction, according to law, however, an interested party shall not  
47 have standing to institute an action or proceeding challenging any



1 final decision of a board of adjustment approving an application for  
2 development unless that interested party appeared at the public  
3 hearing and satisfied the disclosure requirements of subsection d. of  
4 section 1 of P.L.1977, c.336 (C.40:55D-48.1).

5 (cf: P.L.1991, c.256, s.3)

6  
7 5. Section 9 of P.L.1975, c.291 (C.40:55D-18) is amended to  
8 read as follows:

9 9. Enforcement. a. The governing body of a municipality shall  
10 enforce this act and any ordinance or regulation made and adopted  
11 hereunder. To that end, the governing body may require the  
12 issuance of specified permits, certificates or authorizations as a  
13 condition precedent to (1) the erection, construction, alteration,  
14 repair, remodeling, conversion, removal or destruction of any  
15 building or structure, (2) the use or occupancy of any building,  
16 structure or land, and (3) the subdivision or resubdivision of any  
17 land; and shall establish an administrative officer and offices for the  
18 purpose of issuing such permits, certificates or authorizations; and  
19 may condition the issuance of such permits, certificates and  
20 authorizations upon the submission of such data, materials, plans,  
21 plats and information as is authorized hereunder and upon the  
22 express approval of the appropriate State, county or municipal  
23 agencies; and may establish reasonable fees to cover administrative  
24 costs for the issuance of such permits, certificates and  
25 authorizations. The administrative officer shall issue or deny a  
26 zoning permit within 10 business days of receipt of a request  
27 therefor. If the administrative officer fails to grant or deny a zoning  
28 permit within this period, the failure shall be deemed to be an  
29 approval of the application for the zoning permit. In case any  
30 building or structure is erected, constructed, altered, repaired,  
31 converted, or maintained, or any building, structure or land is used  
32 in violation of this act or of any ordinance or other regulation made  
33 under authority conferred hereby, the proper local authorities of the  
34 municipality or an interested party, in addition to other remedies,  
35 may institute any appropriate action or proceedings to prevent such  
36 unlawful erection, construction, reconstruction, alteration, repair,  
37 conversion, maintenance or use, to restrain, correct or abate such  
38 violation, to prevent the occupancy of said building, structure or  
39 land, or to prevent any illegal act, conduct, business or use in or  
40 about such premises; however, an interested party shall not have  
41 standing to institute an action or proceeding challenging any final  
42 decision of a board of adjustment or planning board approving an  
43 application for development unless the interested party appeared at  
44 the public hearing and satisfied the disclosure requirements of  
45 subsection d. of section 1 of P.L.1977, c.336 (C.40:55D-48.1).

46 b. The court, on motion of a defendant whose application for  
47 development is affected by the commencement of an action or

1 proceeding pursuant to subsection a. of this section, or of a  
2 municipality or municipal agency joined as a defendant in the  
3 action or proceeding, may require the posting of security or other  
4 equitable terms as it deems appropriate.

5 c. Whenever the court determines in an action or proceeding  
6 commenced pursuant to subsection a. of this section that a  
7 municipality or municipal agency joined as a defendant acted  
8 properly within the scope of its delegated authority and that the  
9 challenged action of the municipality or municipal agency should  
10 be upheld, the court may award attorneys' fees, costs, and expenses  
11 to the municipality or municipal agency, if and to the extent the  
12 attorneys' fees, costs, and expenses were paid out of public funds  
13 and not funded or reimbursed by an applicant, developer, or other  
14 third party.

15 d. Actions or proceedings commenced pursuant to subsection a.  
16 of this section shall not be commenced or prosecuted for any  
17 improper purpose, such as to harass or to cause unnecessary delay  
18 or costs of litigation. The claims asserted therein shall be warranted  
19 by existing law, or by a non-frivolous argument for the extension,  
20 modification, or reversal of existing law or the establishment of  
21 new law. A defendant, within 10 days of receipt of the summons  
22 and complaint, may demand in writing the discontinuance of an  
23 action or proceeding, on the ground that the claims asserted therein  
24 are frivolous or that the action or proceeding has been commenced  
25 for an improper purpose. If the plaintiff does not discontinue the  
26 action or proceeding in response to the defendant's demand, and the  
27 court subsequently determines the claims asserted therein to be  
28 frivolous, or that the action or proceeding was commenced for an  
29 improper purpose, then in connection with the dismissal thereof,  
30 and in addition to the security posted, if any, the court may award  
31 to each of the defendants reasonable attorneys' fees and all costs  
32 and expenses of the action or proceedings, as and to the extent  
33 provided by applicable court rule; provided, however, that nothing  
34 in this subsection shall be construed as limiting or restricting an  
35 award of attorneys' fees, costs, and expenses to a prevailing  
36 municipality or municipal agency pursuant to subsection c. of this  
37 section. In addition, the court may impose sanctions on the  
38 plaintiff, the attorney for plaintiff, or both, in addition to awarding  
39 attorneys fees, costs, and expenses to a defendant, as and to the  
40 extent provided by applicable court rule.

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

42  
43 6. Section 16 of P.L.1975, c.291 (C.40:55D-25) is amended to  
44 read as follows:

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

- 1 (1) The master plan pursuant to article 3;
- 2 (2) Subdivision control and site plan review pursuant to article
- 3 6;
- 4 (3) The official map pursuant to article 5;
- 5 (4) The zoning ordinance including conditional uses pursuant to
- 6 article 8;
- 7 (5) The capital improvement program pursuant to article 4;
- 8 (6) Variances and certain building permits in conjunction with
- 9 subdivision, site plan and conditional use approval pursuant to
- 10 article 7.
- 11 b. The planning board may:
- 12 (1) Participate in the preparation and review of programs or
- 13 plans required by State or federal law or regulation;
- 14 (2) Assemble data on a continuing basis as part of a continuous
- 15 planning process; **and**
- 16 (3) Perform such other advisory duties as are assigned to it by
- 17 ordinance or resolution of the governing body for the aid and
- 18 assistance of the governing body or other agencies or officers;
- 19 (4) (a) Establish committees consisting of less than a quorum of
- 20 board members, with or without the board's attorney, experts, and
- 21 technical staff, for the purpose of reviewing an application for
- 22 development filed with the board, except when reviewing a
- 23 variance, pursuant to subsection d. of section 57 of P.L.1975, c.291
- 24 (C.40:55D-70). Any such committee may review procedural or
- 25 substantive issues relating to the application for development or
- 26 changes suggested by the technical staff with the applicant, the
- 27 applicant's professionals, or both, prior to the commencement of a
- 28 public hearing on the application. Any matter considered or
- 29 discussed by the committee or any recommendation made by the
- 30 committee shall not be binding on either the board or the applicant.
- 31 A meeting of any such committee shall not constitute a meeting of
- 32 the board, and notice shall not be required.
- 33 (b) Nothing herein shall be construed to prevent or prohibit a
- 34 board's attorney, experts, and technical staff from meeting with the
- 35 applicant's counterparts before or after commencement of a public
- 36 hearing on an application; and
- 37 (5) Meet jointly with the governing body, zoning board of
- 38 adjustment, or both, for the purpose of discussing the annual report
- 39 prepared pursuant to section 16 of P.L.1985, c.516 (C.40:55D-
- 40 70.1).
- 41 c. (1) In a municipality having a population of 15,000 or less, a
- 42 nine-member planning board, if so provided by ordinance, shall
- 43 exercise, to the same extent and subject to the same restrictions, all
- 44 the powers of a board of adjustment; but the Class I and the Class
- 45 III members shall not participate in the consideration of
- 46 applications for development which involve relief pursuant to
- 47 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).
- 48 (2) In any municipality, a nine-member planning board, if so

1 provided by ordinance, subject to voter referendum, shall exercise,  
2 to the same extent and subject to the same restrictions, all the  
3 powers of a board of adjustment; but the Class I and the Class III  
4 members shall not participate in the consideration of applications  
5 for development which involve relief pursuant to subsection d. of  
6 section 57 of P.L.1975, c.291 (C.40:55D-70).

7 d. In a municipality having a population of 2,500 or less, the  
8 planning board, if so provided by ordinance, shall exercise, to the  
9 same extent and subject to the same restrictions, all of the powers of  
10 an historic preservation commission, provided that at least one  
11 planning board member meets the qualifications of a Class A  
12 member of an historic preservation commission and at least one  
13 member meets the qualifications of a Class B member of that  
14 commission.

15 e. In any municipality in which the planning board exercises  
16 the power of a zoning board of adjustment pursuant to subsection c.  
17 of this section, a zoning board of adjustment may be appointed  
18 pursuant to law, subject to voter referendum permitting  
19 reconstitution of the board. The public question shall be initiated  
20 through an ordinance adopted by the governing body.

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

22  
23 7. Section 1 of P.L.1977, c.336 (C.40:55D-48.1) is amended to  
24 read as follows:

25 1. **【A corporation or partnership applying to a planning board**  
26 **or a board of adjustment or to the governing body of a municipality**  
27 **for permission to subdivide a parcel of land into six or more lots, or**  
28 **applying for a variance to construct a multiple dwelling of 25 or**  
29 **more family units or for approval of a site to be used for**  
30 **commercial purposes】** a. An application for development submitted  
31 by an organization, as defined in section 3.2 of P.L.1975, c.291  
32 (C.40:55D-5), shall list the names and addresses of all members,  
33 stockholders or individual partners 【owning】 holding at least a 10%  
34 【of its stock of any class or at least 10% of the】 ownership interest  
35 in the 【partnership, as the case may be】 organization, including any  
36 other organization holding at least a 10% ownership interest in the  
37 organization submitting the application for development, and shall  
38 also identify the owner of the property that is the subject of the  
39 application for development, including any organization holding at  
40 least a 10% ownership interest in the property.

41 b. An organization other than the applicant appearing at a  
42 hearing shall, at the time of making its appearance and prior to  
43 cross-examining any of the applicant's witnesses or providing  
44 testimony on the application, submit to the municipal agency a  
45 certification or affidavit of an authorized officer or representative of  
46 the organization, disclosing the names and addresses of all  
47 members, stockholders or individual partners holding at least a 10%

1 ownership interest in the organization, including any other  
2 organization holding at least a 10% ownership interest in the  
3 organization.

4 c. An application for development submitted by a nonprofit  
5 organization shall list the names and addresses of all officers and  
6 trustees of the non-profit organization. A nonprofit organization  
7 that is not the applicant shall, at the time of making its appearance  
8 at the hearing and prior to cross-examining any of the applicant's  
9 witnesses or providing testimony on the application, submit to the  
10 municipal agency a certification or affidavit disclosing the names  
11 and addresses of all officers and trustees of the nonprofit  
12 organization.

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

17 1. the full name and address of the person, organization or  
18 nonprofit organization;

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

20 3. any affiliation with, or financial support provided to the  
21 person, organization or nonprofit organization directly or indirectly  
22 by, an economic competitor of the applicant or developer; and

23 4. the full name and address of any other person, organization  
24 or nonprofit organization responsible for the payment of fees and  
25 costs of professionals appearing or presenting testimony on behalf  
26 of the person, organization or nonprofit organization

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

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

31  
32 8. Section 2 of P.L.1977, c.336 (C.40:55D-48.2) is amended to  
33 read:

34 2. If **【a corporation or partnership】** an organization owns an  
35 interest equivalent to 10% or more of **【the stock of a corporation, or**  
36 **10% or greater interest in a partnership,】** an organization that is  
37 subject to the disclosure requirements pursuant to section 1 of **【this**  
38 **act】** P.L.1977, c.336 (C.40:55D-48.1), that **【corporation or**  
39 **partnership】** organization shall list the names and addresses of its  
40 **【stockholders】** interest holders holding 10% or **【more of its stock**  
41 **or of 10% or】** greater interest in the **【partnership, as the case may**  
42 **be, and this requirement shall be followed by every corporate**  
43 **stockholder or partner in a partnership, until the names and**  
44 **addresses of the noncorporate stockholders and individual partners,**  
45 **exceeding the 10% ownership criterion established in this act, have**  
46 **been listed】** organization.

47 (cf: P.L.1977, c.336, s.2)

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

3       3. a. No municipal planning board, board of adjustment or  
4 **【municipal】** governing body shall approve the application of any  
5 **【corporation or partnership】** organization or non-profit organization  
6 which does not comply with 【this act】 P.L.1977, c.336 (C.40:55D-  
7 48.1 et seq.). Any approval not in compliance with P.L.1977, c.336  
8 (C.40:55D-48.1 et seq.) shall be voidable in a proceeding in lieu of  
9 prerogative writ in the Superior Court.

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

20       c. No planning board, board of adjustment or municipal  
21 governing body shall consider any testimony or evidence submitted  
22 on behalf of any person, organization, or nonprofit organization  
23 which does not comply with P.L.1977, c.336 (C.40:55D-48.1 et  
24 seq.). Any condition of any approval or any denial based on  
25 testimony or evidence submitted by a person, organization, or non-  
26 profit organization not in compliance with P.L.1977, c.336  
27 (C.40:55D-48.1 et seq.) shall be voidable in proceeding in lieu of  
28 prerogative writ in the Superior Court.

29       d. An applicant may institute a proceeding in lieu of  
30 prerogative writ in the Superior Court to challenge any condition of  
31 any approval or any denial of an application for development by a  
32 municipal planning board, board of adjustment, or governing body  
33 on the grounds that such action is voidable pursuant to subsection c.  
34 of this section, and if the court shall find that the condition of  
35 approval or denial was based substantially on testimony or evidence  
36 submitted by a person, organization, or non-profit organization not  
37 in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), the  
38 court may declare the condition of approval to be void or in the case  
39 of denial of the application for development, may reverse the denial  
40 and remand the application to the appropriate board for approval of  
41 the application with the imposition of appropriate conditions.

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

43  
44       10. Section 4 of P.L.1977, c.336 (C.40:55D-48.4) is amended to  
45 read as follows:

46       4. Any **【corporation or partnership** which conceals the names  
47 of the stockholders owning 10% or more of its stock, or of the

1 individual partners owning a 10% or greater interest in the  
2 partnership, as the case may be,] organization or non-profit  
3 organization failing to disclose in accordance with P.L.1977, c.336  
4 (C.40:55D-48.1 et seq.), shall be subject to a fine of \$1,000.00 to  
5 \$10,000.00 which shall be [recovered] recoverable in the name of  
6 the municipality in any court of record in the State in a summary  
7 manner pursuant to ["The Penalty Enforcement Law" (N.J.S.  
8 2A:58-1 et seq.)] the "Penalty Enforcement Law of 1999,"  
9 P.L.1999, c.274 (C.2A:58-10 et seq.).  
10 (cf: P.L.1977, c.336, s.4)

11  
12 11. (New section) Unless a stay has been issued by a court of  
13 competent jurisdiction, a planning board or a board of adjustment  
14 shall have continuing jurisdiction to hear an application for  
15 development, and a developer may perfect approvals,  
16 notwithstanding the pendency of an appeal concerning an  
17 application for development of the same parcel.

18  
19 12. This act shall take effect immediately.  
20  
21

## 22 STATEMENT

23  
24 The Equitable Disclosure Act of 2010 applies the same rules for  
25 objectors and applicants in the land use approval and appeals  
26 process. The goal is to make sure land use boards and other boards  
27 of jurisdictions receive full disclosure of applicants and objectors.  
28 Due process rights are fully maintained under this bill. Disclosure  
29 requirements are applied to objectors and applicants on a level  
30 playing field.

31 The proposed legislation applies current case law and court rules  
32 for the disclosure of all interests before a land use board or court.  
33 The legislation addresses coordinated efforts to delay approvals that  
34 are oftentimes undertaken by economic competitors and are at times  
35 clandestine. The Wall Street Journal reports how these covert  
36 operations are proudly referred to as "black arts" by the groups  
37 undertaking them. ("Rival Chains Secretly Fund Opposition to  
38 Walmart," The Wall Street Journal, June 7, 2010.)

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

46 This bill does not limit anyone's rights, including economic  
47 competitors, with legitimate, land-use based objections from

- 1 appearing and testifying. The bill contains the following  
2 components:
- 3 1. Clarifies the definition of interested party in the MLUL to  
4 exclude economic competition as the sole reason for standing while  
5 at the same time protects economic competitors standing as “a party  
6 immediately concerned” and gives them an opportunity to make  
7 their case as to how the approval would negatively impact their  
8 position on land use grounds (language modeled after case law);
- 9 2. Adds transparency and fairness by applying disclosure  
10 requirements to objectors similar to the ownership disclosure  
11 requirements for the applicant. They include providing: name and  
12 address, employer, affiliation with an economic competitor, who is  
13 paying for professional fees if any, and a statement on how the right  
14 to use, acquire, or enjoy property is affected;
- 15 3. Empowers court, in its discretion, to award attorney’s fees  
16 that were paid with public funds should an approval be upheld on  
17 appeal;
- 18 4. Empowers court, in its discretion, to award applicant’s  
19 attorney’s fees should the case be deemed to be frivolous (language  
20 modeled from court rules);
- 21 5. Empowers court, at its discretion, to order appellant to post  
22 security (modeled after court rules);
- 23 6. Provides planning or zoning board with continuing  
24 jurisdiction over an application notwithstanding an appeal unless a  
25 stay has been issued by the reviewing court;
- 26 7. Requires participation in public hearing process in order to  
27 have standing to appeal to courts.