

ASSEMBLY, No. 5145

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 14, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2020)

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
4 P.L.1975, 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 "Common open space" means an open space area within or
47 related to a site designated as a development, and designed and
48 intended for the use or enjoyment of residents and owners of the

1 development. Common open space may contain such
2 complementary structures and improvements as are necessary and
3 appropriate for the use or enjoyment of residents and owners of the
4 development.

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

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

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

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

24 "County agriculture development board" or "CADB" means a
25 county agriculture development board established by a county
26 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-
27 14).

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

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

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

37

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

40 3.1. "Days" means calendar days.

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

45 "Developer" means the legal or beneficial owner or owners of a
46 lot or of any land proposed to be included in a proposed
47 development, including the holder of an option or contract to

1 purchase, or other person having an enforceable proprietary interest
2 in such land.

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

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

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

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

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

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

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

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

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

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

47 "Final approval" means the official action of the planning board
48 taken on a preliminarily approved major subdivision or site plan,

1 after all conditions, engineering plans and other requirements have
2 been completed or fulfilled and the required improvements have
3 been installed or guarantees properly posted for their completion, or
4 approval conditioned upon the posting of such guarantees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29

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

32 3.4. "Sedimentation" means the deposition of soil that has been
33 transported from its site of origin by water, ice, wind, gravity or
34 other natural means as a product of erosion.

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

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

45 "Service unit" means a standardized measure of consumption,
46 use, generation or discharge attributable to an individual unit of
47 development calculated in accordance with generally accepted

1 engineering or planning standards for a particular category of
2 capital improvements or facility expansions.

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

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

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

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

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

41 "Subdivision" means the division of a lot, tract or parcel of land
42 into two or more lots, tracts, parcels or other divisions of land for
43 sale or development. The following shall not be considered
44 subdivisions within the meaning of this act, if no new streets are
45 created: (1) divisions of land found by the planning board or
46 subdivision committee thereof appointed by the chairman to be for
47 agricultural purposes where all resulting parcels are 5 acres or
48 larger in size, (2) divisions of property by testamentary or intestate

1 provisions, (3) divisions of property upon court order, including but
2 not limited to judgments of foreclosure, (4) consolidation of
3 existing lots by deed or other recorded instrument and (5) the
4 conveyance of one or more adjoining lots, tracts or parcels of land,
5 owned by the same person or persons and all of which are found
6 and certified by the administrative officer to conform to the
7 requirements of the municipal development regulations and are
8 shown and designated as separate lots, tracts or parcels on the tax
9 map or atlas of the municipality. The term "subdivision" shall also
10 include the term "resubdivision."

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

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

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

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

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

33

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

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

45 Any impact fee ordinance adopted pursuant to this section shall
46 include detailed standards and guidelines regarding: (1) the
47 definition of a service unit, including specific measures of
48 consumption, use, generation or discharge attributable to particular

1 land uses, densities and characteristics of development; and (2) the
2 specific purposes for which the impact fee revenues may be
3 expended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26

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

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

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

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

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

46 e. The upgrading, construction, expansion or replacement of
47 existing capital improvements to provide better service to existing
48 development or to provide service due to levels of demand

1 attributable to users originating from and terminating at places or
2 uses which are not situated within the service area of the capital
3 improvement being used.

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

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

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

11

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

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

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

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

35

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

38 20. a. The governing body of any municipality which does not
39 authorize the preparation of a program of municipal capital
40 improvements for the purposes of adopting an impact fee ordinance
41 pursuant to section 6 of P.L. , c. (C.) (pending before the
42 Legislature as this bill) may authorize the planning board from time
43 to time to prepare a program of municipal capital improvement
44 projects projected over a term of at least 6 years, and amendments
45 thereto. Such program may encompass major projects being
46 currently undertaken or future projects to be undertaken, with
47 federal, State, county and other public funds or under federal, State
48 or county supervision. The first year of such program shall, upon

1 adoption by the governing body, constitute the capital budget of the
2 municipality as required by N.J.S.40A:4-43 et seq. The program
3 shall classify projects in regard to the urgency and need for
4 realization, and shall recommend a time sequence for their
5 implementation. The program may also contain the estimated cost
6 of each project and indicate probable operating and maintenance
7 costs and probable revenues, if any, as well as existing sources of
8 funds or the need for additional sources of funds for the
9 implementation and operation of each project. The program shall, as
10 far as possible, be based on existing information in the possession
11 of the departments and agencies of the municipality and shall take
12 into account public facility needs indicated by the prospective
13 development shown in the master plan of the municipality or as
14 permitted by other municipal land use controls.

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

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

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

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

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

39

40 11. (New section) Prior to the adoption by the municipal
41 governing body of an impact fee ordinance authorized pursuant to
42 section 6 of P.L. , c. (C.) (pending before the Legislature as
43 this bill), the planning board shall have prepared, and the governing
44 body shall have adopted a program of municipal capital
45 improvement projects projected over a term of six years and
46 amendments thereto pursuant to section 20 of P.L.1975, c.291
47 (C.40:55D-29). The governing body shall adopt the capital
48 improvement program in accordance with the provisions of section

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

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

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

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

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

30

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

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

43 b. The municipal agency shall make the rules governing such
44 hearings. Any maps and documents for which approval is sought at
45 a hearing shall be on file and available for public inspection at least
46 10 days before the date of the hearing, during normal business
47 hours in the office of the administrative officer. The applicant may
48 produce other documents, records, or testimony at the hearing to

1 substantiate or clarify or supplement the previously filed maps and
2 documents.

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

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

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

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

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

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

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

44 (2) A memorializing resolution adopted at a meeting held not
45 later than 45 days after the date of the meeting at which the
46 municipal agency voted to grant or deny approval. Only the
47 members of the municipal agency who voted for the action taken
48 may vote on the memorializing resolution, and the vote of a

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

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

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

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

44

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

47 30. Contribution for off-tract water, sewer, drainage, and street
48 improvements. The governing body may by ordinance adopt

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

19 A governing body that has adopted an ordinance under this
20 section may also adopt an ordinance assessing an impact fee
21 pursuant to section 6 of P.L. , c. (C.)(pending before the
22 Legislature as this bill) and continue to require a developer to make
23 contributions for off-tract water, sewer, drainage and street
24 improvements pursuant to the provisions of this section.
25 (cf: P.L.1998, c.95, s.8)
26

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

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

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

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

13

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

23

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

34

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

37 12. Except as otherwise provided by this act or in the code,
38 before construction or alteration of any building or structure, the
39 owner, or his agent, engineer or architect, shall submit an
40 application in writing, including signed and sealed drawings and
41 specifications, to the enforcing agency as defined in this act. The
42 application shall be in accordance with regulations established by
43 the commissioner and on a form prescribed by the commissioner
44 and shall be accompanied by payment of the fee to be established
45 by the municipal governing body by ordinance in accordance with
46 standards established by the commissioner. In addition, if
47 appropriate, the application shall include proof, by the owner, that

1 50% of the amount assessed as an impact fee pursuant to section 6
2 of P.L. , c. (C.) (pending before the Legislature as this bill) has
3 been paid to the municipality in which the structure is situated,
4 prior to the issuance of a construction permit. The application for a
5 construction permit shall be filed with the enforcing agency and
6 shall be a public record; and no application for a construction
7 permit shall be removed from the custody of the enforcing agency
8 after a construction permit has been issued. Nothing contained in
9 this paragraph shall be interpreted as preventing the imposition of
10 requirements in the code, for additional permits for particular kinds
11 of work, including but not limited to plumbing, electrical, elevator,
12 fire prevention equipment or boiler installation or repair work, or in
13 other defined situations.

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

31 No permit shall be issued for a public school facility unless the
32 final plans and specifications have been first approved by the
33 Bureau of Facility Planning Services in the Department of
34 Education or a municipal code official who is appropriately licensed
35 by the Commissioner of Community Affairs for the type and level
36 of plans being reviewed. Approval by the Bureau of Facility
37 Planning Services in the Department of Education shall only be
38 required when a review for educational adequacy is necessary.
39 Requirements determining when a review for educational adequacy
40 is necessary shall be established jointly by the Department of
41 Community Affairs and the Department of Education. The
42 standards shall thereafter be adopted as part of the Uniform
43 Construction Code regulations by the Department of Community
44 Affairs. After the final plans and specifications have been approved
45 for educational adequacy by the Bureau of Facility Planning
46 Services in the Department of Education, a local board of education
47 may submit the final plans and specifications for code approval to
48 either the Bureau of Facility Planning Services in the Department of

1 Education or a municipal code official who is appropriately licensed
2 by the Commissioner of Community Affairs for the type and level
3 of plans being reviewed. The Bureau of Facility Planning Services
4 in the Department of Education when approving final plans and
5 specifications shall be responsible for insuring that the final plans
6 and specifications conform to the requirements of the code as well
7 as for insuring that they provide for an educationally adequate
8 facility. In carrying out its responsibility pursuant to the provisions
9 of this section the Department of Education shall employ persons
10 licensed by the Commissioner of Community Affairs for the type
11 and level of plans being reviewed.

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

13

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

16 15. No building or structure hereafter constructed shall be used
17 or occupied in whole or in part until a certificate of occupancy shall
18 have been issued by the enforcing agency. No building or structure
19 hereafter altered, in whole or in part, shall be used or occupied until
20 such a certificate has been issued, except that any use or occupancy
21 in an already existing building or structure that was not
22 discontinued during its alteration may be continued in the
23 preexisting structure for 30 days after the completion of the
24 alteration without the issuance of a certificate of occupancy. A
25 certificate of occupancy shall be issued by the enforcing agency
26 when all of the work covered by a construction permit shall have
27 been completed in accordance with the permit, the code, and other
28 applicable laws and ordinances and, if appropriate upon, proof that
29 the remaining 50% of the impact fee imposed pursuant to
30 P.L. , c. (C.) (pending before the Legislature as this bill) has
31 been paid to the appropriate municipality by the developer. In the
32 case of any new home subject to sales surcharge pursuant to
33 P.L.1991, c.202 (C.46:3B-13 et al.) a certificate of occupancy shall
34 not be issued except after presentation of a receipt, or verified
35 duplicate thereof, from the Department of Community Affairs
36 evidencing the payment of the surcharge. On request of a holder of
37 a construction permit, the appropriate enforcing agency may issue a
38 temporary certificate of occupancy for a building or structure, or
39 part thereof, before the entire work covered by the construction
40 permit has been completed, if the part or parts of the building or
41 structure to be covered by the certificate may be occupied prior to
42 completion of all work in accordance with the permit, the code, and
43 other applicable laws and ordinances, without endangering the
44 health and safety of the occupants or users. When a building or
45 structure is entitled thereto, the enforcing agency shall issue a
46 certificate of occupancy within 10 business days after receipt of a
47 written application therefor in accordance with regulations
48 established by the commissioner on a form prescribed by the

1 commissioner accompanied by payment of a fee to be established
2 by the municipal governing body by ordinance in accordance with
3 standards established by the commissioner. The certificate of
4 occupancy shall certify that the building or structure has been
5 constructed in accordance with the provisions of the construction
6 permit, the code, and other applicable laws and ordinances.
7 (cf: P.L.1991, c.202, s.8)

8
9 19. (New section) a. The Commissioner of Community Affairs
10 shall provide technical assistance to municipalities to aid them in
11 adopting impact fee ordinances authorized pursuant to section 6 of
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 and shall also establish a permanent Development Impact Fee
14 Review and Advisory Commission to provide ongoing technical
15 assistance in connection with the tasks set forth below and from
16 time to time evaluate the implementation of the various impact fee
17 ordinances adopted by municipalities pursuant to
18 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

1 the commission in order for it to discharge its duties.

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

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

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

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

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

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

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

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

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

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

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

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

1 20. (New section) The Commissioner of Education shall
2 provide assistance to the Development Impact Fee Review and
3 Advisory Commission established pursuant to subsection b. of
4 section 19 of P.L. , c. (C.) (pending before the Legislature
5 as this bill) in developing guidelines to assist municipalities in the
6 calculation of impact fee assessments for educational facilities
7

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

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

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

43 b. Any contract which has been entered into or any conditions
44 of development approval which have been agreed to by a developer
45 and approving authority prior to the effective date of
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 evidenced by written documentation attesting to the signed contract
48 or agreement or by a memorializing resolution formalizing the

1 approval, shall not be invalidated by any provision of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 shall not be subject to review under the provisions of any ordinance
4 which is adopted pursuant to section 6 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), and shall not be subject
6 to appeal pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill).

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

19
20 23. There is hereby appropriated to the Department of
21 Community Affairs from the General Fund the sum of \$250,000 to
22 cover the costs of staffing the Development Impact Review and
23 Advisory Commission.

24
25 24. This act shall take effect immediately.

26 27 28 STATEMENT

29
30 This bill, known as the "Municipal Development Impact Fee
31 Authorization Act," would allow municipalities to impose an impact
32 fee on developers under certain circumstances.

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

40 Municipalities may impose an impact fee to cover a broad range
41 of expenditure areas, including any transportation improvement
42 necessitated by new development in a county not covered by a
43 transportation development district created pursuant to the "New
44 Jersey Transportation Development District Act of 1989," water
45 treatment and distribution, wastewater treatment and sewerage,
46 flood control and stormwater management, educational facilities,
47 municipal parks and recreation facilities, public safety and related
48 facilities. The bill exempts low and moderate income housing units

1 as defined under P.L.1985, c.222 (C.52:27D-301 et al.) from the
2 assessment of impact fees and prohibits the internal subsidy within
3 inclusionary developments which would otherwise see purchasers
4 of market-priced units absorb the impact fees forgiven on their
5 affordable counterparts.

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

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

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

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

43 The bill establishes a permanent 15 member Development
44 Impact Fee Review and Advisory Commission (DIFRAC) in the
45 Department of Community Affairs to provide ongoing technical
46 assistance to municipalities in adopting impact fee ordinances and

1 to evaluate the implementation of those ordinances. The first
2 responsibility of DIFRAC shall be the preparation and
3 dissemination of model ordinance. All municipal development
4 impact fee ordinances must be certified by DIFRAC as to their
5 conformity with law and the standards adopted by the commission.