

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40:55 D-4

(Municipal development agreements-- permit)

CHAPTER 129

Laws Of: 1987

Bill No: S2966

Sponsor(s): Van Wagner and others

Date Introduced: February 2, 1987

Committee: Assembly: -----

Senate: County and Municipal Government

Amended during passage: Yes according to Governor's recommendations

Amendments denoted by asterisks

Date of Passage: Assembly:

March 12, 1987 Re-enacted 5-21-87

Senate:

March 9, 1987 Re-enacted 5-11-87

Date of Approval: May 28, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

DEPOSITORY COPY  
Do Not Remove From Library

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 2966

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1987

By Senators VAN WAGNER, JACKMAN, McMANIMON and  
GAGLIANO

Referred to Committee on County and Municipal Government

AN ACT providing for municipal development agreements and  
amending and supplementing P. L. 1975, c. 291.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

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

3 3.1. "Days" means calendar days.

4 "Density" means the permitted number of dwelling units **\*\***[*or*  
5 *nonresidential floor area*]**\*\*** per gross area of land to be developed.

6 "Developer" means the legal or beneficial owner or owners of  
7 a lot or of any land proposed to be included in a proposed develop-  
8 ment, including the holder of an option or contract of purchase,  
9 or other person having an enforceable proprietary interest in such  
10 land.

11 "Development" means the division of a parcel of land into two  
12 or more parcels, the construction, reconstruction, conversion, struc-  
13 tural alterations, relocation or enlargement of any building or other  
14 structure, or of any mining excavation or landfill, and any use or  
15 change in the use of any building or other structure, or land or  
16 extension of use of land, for which permission may be required  
17 pursuant to this act.

18 "Development regulation" means a zoning ordinance, subdivi-  
19 sion ordinance, site plan ordinance, official map ordinance or other  
20 municipal regulation of the use and development of land, or amend-  
21 ment thereto adopted and filed pursuant to this act.

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted February 19, 1987.

\*\*—Senate amendments adopted in accordance with Governor's recommen-  
dations April 30, 1987.

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

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

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

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

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

43 "*General development plan*" means a comprehensive plan for the  
 44 development of a planned development, as provided in section 4,  
 45 of this amendatory and supplementary act (P. L. , c. ; C.  
 46 ).

47 "Governing body" means the chief legislative body of the muni-  
 48 cipality. In municipalities having a board of public works, "gov-  
 49 erning body" means such board.

50 "*Historic district*" means one or more historic sites and inter-  
 51 vening or surrounding property significantly affecting or affected  
 52 by the quality and character of the historic site or sites.

53 "Historic site" means any real property, man-made structure,  
 54 natural object or configuration or any portion or group of the  
 55 foregoing which has been formally designated in the master plan  
 56 as being of historical, archeological, cultural, scenic or architectural  
 57 significance.

58 "Interested party" means: (a) in a criminal or quasi-criminal  
 59 proceeding, any citizen of the State of New Jersey; and (b) in the  
 60 case of a civil proceeding in any court or in an administrative  
 61 proceeding before a municipal agency, any person, whether residing  
 62 within or without the municipality, whose right to use, acquire,  
 63 or enjoy property is or may be affected by any action taken under  
 64 this act, or whose rights to use, acquire, or enjoy property under

65 this act, or under any other law of this State or of the United  
66 States have been denied, violated or infringed by an action or a  
67 failure to act under this act.

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

70 "Lot" means a designated parcel, tract or area of land estab-  
71 lished by a plat or otherwise, as permitted by law and to be used,  
72 developed or built upon as a unit.

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

3 3.2. "Maintenance guarantee" means any security, other than  
4 cash, which may be accepted by a municipality for the maintenance  
5 of any improvements required by this act.

6 "Major subdivision" means any subdivision not classified as  
7 a minor subdivision.

8 "Master plan" means a composite of one or more written or  
9 graphic proposals for the development of the municipality as set  
10 forth in and adopted pursuant to section 19 of this act.

11 "Mayor" means the chief executive of the municipality, what-  
12 ever his official designation may be, except that in the case of  
13 municipalities governed by municipal council and municipal man-  
14 ager the term "mayor" shall not mean the "municipal manager"  
15 but shall mean the mayor of such municipality.

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

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

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

33 "Municipal agency" means a municipal planning board or board  
34 of adjustment, or a governing body of a municipality when acting  
35 pursuant to this act and any agency which is created by or responsi-

36 ble to one or more municipalities when such agency is acting pur-  
37 suant to this act.

38 "*Municipal development agreement*" or "*agreement*" means a  
39 *written contract between a municipality and a developer governing*  
40 *the development of a planned development pursuant to this act.*

41 "Nonconforming lot" means a lot the area, dimension or location  
42 of which was lawful prior to the adoption, revision or amendment  
43 of a zoning ordinance, but fails to conform to the requirements of  
44 the zoning district in which it is located by reason of such adoption,  
45 revision or amendment.

46 "Nonconforming structure" means a structure the size, dimen-  
47 sion or location of which was lawful prior to the adoption, revision  
48 or amendment of a zoning ordinance, but which fails to conform to  
49 the requirements of the zoning district in which it is located by  
50 reasons of such adoption, revision or amendment.

51 "Nonconforming use" means a use or activity which was lawful  
52 prior to the adoption, revision or amendment of a zoning ordinance,  
53 but which fails to conform to the requirements of the zoning dis-  
54 trict in which it is located by reasons of such adoption, revision  
55 or amendment.

56 "Official county map" means the map, with changes and addi-  
57 tions thereto, adopted and established, from time to time, by resolu-  
58 tion of the board of chosen freeholders of the county pursuant to  
59 R. S. 40:27-5.

60 "Official map" means a map adopted by ordinance pursuant to  
61 article 5.

62 "Offsite" means located outside the lot lines of the lot in ques-  
63 tion but within the property (of which the lot is a part) which is  
64 the subject of a development application or contiguous portion  
65 of a street or right-of-way.

66 "Off-tract" means not located on the property which is the sub-  
67 ject of a development application nor on a contiguous portion of  
68 a street or right-of-way.

69 "Onsite" means located on the lot in question.

70 "On-tract" means located on the property which is the subject  
71 of a development application or on a contiguous portion of a street  
72 or right-of-way.

73 "Open-space" means any parcel or area of land or water essen-  
74 tially unimproved and set aside, dedicated, designated or reserved  
75 for public or private use or enjoyment or for the use and enjoy-  
76 ment of owners and occupants of land adjoining or neighboring  
77 such open space; provided that such areas may be improved with  
78 only those buildings, structures, streets and offstreet parking and

37 sections of development, whether it be earlier, later or simultaneous  
38 in the development, than in others:

39 (5) Setting forth any requirement that the approval by the  
40 planning board of a greater concentration of density or intensity  
41 of land use for any section to be developed be offset by a smaller  
42 concentration in any completed prior stage or by an appropriate  
43 reservation of common open space on the remaining land by grant  
44 of easement or by covenant in favor of the municipality; provided  
45 that such reservation shall, as far as practicable, defer the precise  
46 location of common open space until an application for final  
47 approval is filed, so that flexibility of development can be main-  
48 tained:

49 (6) Setting forth any requirements for timing of development  
50 among the various types of uses and subgroups thereunder and,  
51 in the case of planned unit development and planned unit resi-  
52 dential development, whether some nonresidential uses are re-  
53 quired to be built before, after or at the time as the residential  
54 uses.

55 d. Provisions ensuring in the case of a development which pro-  
56 poses construction over a period of years, the protection of the  
57 interests of the public and of the residents, occupants and owners  
58 of the proposed development in the total completion of the develop-  
59 ment.

60 e. Provisions that require as a condition for local municipal  
61 approval the submission of proof that no taxes or assessments for  
62 local improvements are due or delinquent on the property for  
63 which any subdivision, site plan, or planned development applica-  
64 tion is made.

65 f. Provisions for the creation of a Site Plan Review Advisory  
66 Board for the purpose of reviewing all site plan applications and  
67 making recommendations to the planning board in regard  
68 thereto.\*\*

1 3. (New section) a. \*\*[Any municipality may enter into a munic-  
2 ipal development agreement with a qualified developer pursuant to  
3 subsection c. of section 5 of this amendatory and supplementary  
4 act.

5 The agreement shall represent a contract between the munic-  
6 pality and the developer which sets]\*\* \*\**The general develop-*  
7 *ment plan shall set\*\** forth the permitted number of dwelling  
8 units, the amount of nonresidential floor space, \*\*[and]\*\*\*\* the  
9 residential \*\*[and nonresidential]\*\*\*\* density \*\*[to comprise]\*\*\*\* \*\*,  
10 *and the nonresidential floor area ratio for\*\** the planned develop-

79 other improvements that are designed to be incidental to the na-  
80 tural openness of the land.

81 "Qualified developer" means a developer who has submitted a  
82 general development plan which the planning board has determined  
83 to be complete pursuant to section 5 of this amendatory and  
84 supplementary act (P. L. \_\_\_\_\_, c. \_\_\_\_\_, C. \_\_\_\_\_).]\*\*

1 \*\*2. Section 29.1 of P. L. 1975, c. 291 (C. 40:55D-39) is amended  
2 to read as follows: 29.1 An ordinance requiring approval by the  
3 planning board of either subdivisions or site plans or both may  
4 include the following:

5 a. Provisions for off-tract water, sewer, drainage, and street  
6 improvements which are necessitated by a subdivision or land  
7 development, subject to the provisions of section 30:

8 b. Provisions for standards encouraging and promoting flex-  
9 ibility, and economy in layout and design through the use of  
10 planned unit development, planned unit residential development  
11 and residential cluster; provided that such standards shall be  
12 appropriate to the type of development permitted; and provided  
13 further that the ordinance shall set forth the limits and extent of  
14 any special provisions applicable to such planned developments,  
15 so that the manner in which such special provisions differ from  
16 the standards otherwise applicable to subdivisions or site plans  
17 can be determined:

18 c. Provisions for planned development:

19 (1) **Setting forth any variations from the ordinary standards**  
20 **for preliminary and final approval** *Authorizing the planning*  
21 *board to grant general development plan approval to provide the*  
22 *increased flexibility desirable to promote mutual agreement*  
23 *between the applicant and the planning board on the basic scheme*  
24 *of a planned development* **at the stage of preliminary approval**  
25 *and setting forth any variations from the ordinary standards for*  
26 *preliminary and final approval*:

27 (2) Requiring that any common open space resulting from the  
28 application of standards for density, or intensity of land use, be  
29 set aside for the use and benefit of the owners or residents in such  
30 development subject to section 31 of this act:

31 (3) Setting forth how the amount and location of any common  
32 open space shall be determined and how its improvement and  
33 maintenance for common open space use shall be secured subject to  
34 section 31 of this act:

35 (4) Authorizing the planning board to allow for a greater con-  
36 centration of density, or intensity of land use, within a section or

11 ment, in its entirety, according to a schedule which sets forth the  
 12 timing of the various sections of the development. **\*\*[The agree-**  
 12A **ment may also include any other terms negotiated between the**  
 12B **municipality and the developer.**

13 In entering into an agreement, the municipality may agree that  
 14 notwithstanding any provision of P. L. 1975, c. 291 (C. 40:55D-1  
 15 et seq.), or any ordinance or regulation adopted pursuant thereto  
 16 after the effective date of the agreement, the planned development  
 17 shall be developed in accordance with the terms of that agree-  
 17A **ment.]\*\* *\*\*The planned development shall be developed in ac-***  
 17B ***cordance with the general development plan approved by the***  
 17C ***planning board notwithstanding any provision of P. L. 1975, c. 291***  
 17D ***(C. 40:55D-1 et seq.), or an ordinance or regulation adopted pur-***  
 17E ***suant thereto after the effective date of the approval.\*\****

18 b. The term of the **\*\*[agreement]\*\*** ***\*\*effect of the general***  
 19 ***development plan approval\*\**** shall be determined by the planning  
 20 board using the guidelines set forth in subsection e. of this section,  
 21 except that the term of the **\*\*[agreement]\*\*** ***\*\*effect of the***  
 22 ***approval\*\**** shall not exceed 20 years from the date upon which  
 23 the developer receives final approval of the first section of the  
 24 planned development pursuant to P. L. 1975, c. 291 (C. 40:55D-1  
 25 et seq.). **\*\*[The planning board shall review and, by resolution,**  
 26 **approve the proposed agreement and forward the approved**  
 27 **agreement to the governing body. Upon receipt of the approved**  
 28 **agreement from the planning board, the governing body shall**  
 29 **review the proposed agreement and shall, within 45 days of**  
 30 **receiving the agreement from the planning board, notify the**  
 31 **developer regarding either its intent to enter into the agreement**  
 32 **or its reasons for not entering into the agreement. The governing**  
 33 **body shall enter into the agreement by adopting an ordinance**  
 33A **which includes a full text of the agreement to be entered into.**

34 In the event that the governing body or developer proposes to  
 35 amend or revise an agreement which has already received planning  
 36 board approval, whether upon review of the initial agreement or  
 37 upon any subsequent proposal to amend or revise the agreement,  
 38 the planning board shall first review and approve any amendment  
 39 or revision by resolution and shall then forward the agreement,  
 40 with any approved amendments and revisions, and a copy of the  
 41 resolution, to the governing body. The governing body shall review  
 42 the amendments or revisions which have received planning board  
 43 approval and indicate by ordinance its approval of those amend-  
 44 **ments or revisions.]\*\***



45 c. In making its determination regarding the duration of the  
 46 **\*\*[agreement]\*\*** *\*\*effect of approval of the development plan\*\**,  
 47 the planning board shall consider: the number of dwelling units  
 48 or amount of nonresidential floor area to be constructed, prevail-  
 49 ing economic conditions, the timing schedule to be followed in  
 50 completing the development and the likelihood of its fulfillment,  
 51 the developer's capability of completing the proposed develop-  
 52 ment, and the contents of the **\*\*[agreement]\*\*** *\*\*general develop-*  
 53 *ment plan and any conditions which the planning board attaches*  
 54 *to the approval thereof\*\**.

1 4. (New section) A general development plan may include, but  
 2 not be limited to, the following:

3 a. A general land use plan at a scale **\*\*[of not less than one**  
 4 **inch = 1,000 feet]\*\*** *\*\*specified by ordinance\*\** indicating the  
 5 tract area and general locations of the land uses to be included in  
 6 the planned development. The total number of dwelling units and  
 7 amount of nonresidential floor area to be provided and proposed  
 8 land area to be devoted to residential and nonresidential use shall  
 9 be set forth. In addition, the proposed types of nonresidential  
 10 uses to be included in the planned development shall be set forth,  
 11 and the land area to be occupied by each proposed use shall be  
 12 estimated. The density *\*\*and intensity of use\*\** of the entire  
 13 planned development shall be set forth, and a residential **\*\*[and a**  
 13A **nonresidential]\*\*** density **\*\*[factor]\*\*** *\*\*and a nonresidential*  
 13B *floor area ratio\*\** shall be provided;

14 b. A circulation plan showing the general location and types of  
 15 transportation facilities, including facilities for pedestrian access,  
 16 within the planned development and any proposed improvements  
 17 to the existing transportation system outside the planned develop-  
 18 ment;

19 c. An open space plan showing the proposed land area and  
 20 general location of parks and any other land area to be set aside  
 21 for conservation and recreational purposes and a general descrip-  
 22 tion of improvements proposed to be made thereon, including a  
 23 plan for the operation and maintenance of parks and recreational  
 24 lands;

25 d. A utility plan indicating the need for and showing the pro-  
 26 posed location of sewage and water lines, any drainage facilities  
 27 necessitated by the physical characteristics of the site, proposed  
 28 methods for handling solid waste disposal, and a plan for the  
 29 operation and maintenance of proposed utilities;

30 e. A storm water management plan setting forth the proposed  
 31 method of controlling and managing storm water on the site;

32 f. An environmental inventory including a general description  
 33 of the vegetation, soils, topography, geology, surface hydrology,  
 34 climate and cultural resources of the site, existing man-made  
 35 structures or features and the probable impact of the development  
 36 on the environmental attributes of the site;

37 g. A community facility plan indicating the scope and type of  
 38 supporting community facilities which may include, but not be  
 39 limited to, educational or cultural facilities, historic sites, libraries,  
 40 hospitals, firehouses, and police stations;

41 h. A housing plan outlining the number of housing units to be  
 42 provided and the extent to which any housing obligation assigned  
 43 to the municipality pursuant to P. L. 1985, c. 222 (C. 52:27D-301  
 44 et al.) will be fulfilled by the development;

45 i. A local service plan indicating those public services which  
 46 the applicant proposes to provide and which may include, but not  
 47 be limited to, water, sewer, cable and solid waste disposal;

48 j. A fiscal report describing the anticipated demand on municipal  
 49 services to be generated by the planned development and any  
 50 other financial impacts to be faced by municipality or school dis-  
 51 tricts as a result of the completion of the planned development.  
 52 The fiscal report shall also include a detailed projection of property  
 53 tax revenues which will accrue to the county, municipality and  
 54 school district according to the timing schedule provided under  
 55 subsection k. of this section, and following the completion of the  
 56 planned development in its entirety; **\*\*[and]\*\***

57 k. A proposed timing schedule in the case of a planned develop-  
 58 ment whose construction is contemplated over a period of years,  
 59 including any terms or conditions which are intended to protect  
 60 the interests of the public and of the residents who occupy any  
 61 section of the planned development prior to the completion of the  
 62 development in its entirety **\*\*[.]\*\* \*\*; and\*\***

63 **\*\*l. A municipal development agreement, which shall mean a**  
 64 **written agreement between a municipality and a developer relating**  
 65 **to the planned development.\*\***

1 5. (New section) **\*\*a.\*\*** Any developer of a parcel of land greater  
 2 than 100 acres in size for which the developer is seeking approval  
 3 of a planned development pursuant to P. L. 1975, c. 291 (C.  
 4 40:55D-1 et seq.) may submit a general development plan to the  
 5 planning board prior to the granting of preliminary approval of  
 6 that development by the planning board pursuant to section 34 of  
 7 P. L. 1975, c. 291 (C. 40:55D-46) or section 36 of P. L. 1975, c. 291  
 8 (C. 40:55D-48).

9 **\*\*[b. A general development plan shall be complete for the pur-**  
 10 **poses of this act when so certified by the planning board. In the**

11 event that the general development plan lacks information indicated  
 12 on a checklist adopted by the municipality and provided to the  
 13 developer, the planning board shall notify the developer within 60  
 14 days of receiving the general development plan, in writing, of the  
 15 deficiencies in the general development plan. Nothing herein shall  
 16 be construed as diminishing the developer's obligation to prove  
 17 in the general development plan process that the developer is  
 18 entitled to a finding of the plan's completeness. The planning  
 19 board may subsequently require correction of any information  
 20 found to be in error and submission of additional information not  
 21 specified on the checklist or any revisions in the accompanying  
 22 documents, as are reasonably necessary to make an informed  
 23 decision as to whether the requirements necessary for a finding  
 24 of completeness have been met. The general development plan  
 25 shall not be deemed incomplete for lack of any such additional  
 26 information or any revisions in the accompanying documents so  
 27 required by the planning board.

28 If the planning board does not notify the developer that the  
 29 general development plan lacks information, the plan shall be  
 30 deemed complete 60 days after its receipt by the planning board.  
 31 If the planning board requests further information, the general  
 32 development plan shall be deemed complete 60 days after the last  
 33 request for further information is made by the planning board.

34 c. The finding of completeness of a general development plan  
 35 regarding a planned development by the planning board shall  
 36 qualify the developer to enter into a municipal development agree-  
 37 ment with a municipality pursuant to section 3 of this amendatory  
 38 and supplementary act. The finding of completeness of a general  
 39 development plan shall not in any way diminish the developer's  
 40 obligation to prove that he is entitled to preliminary or final  
 41 approval of that planned development under any ordinance adopted  
 42 pursuant to P. L. 1975, c. 291 (C. 40:55D-1 et seq.) providing for  
 43 approval of a subdivision or site plan.\*\*

44 *\*\*b. The planning board shall grant or deny general develop-*  
 45 *ment plan approval within 95 days after submission of a complete*  
 46 *application to the administrative officer, or within such further*  
 47 *time as may be consented to by the applicant. Failure of the plan-*  
 48 *ning board to act within the period prescribed shall constitute*  
 49 *general development plan approval of the planned development.\*\**

1 6. (New section) In the event that the developer seeks to modify  
 2 the proposed timing schedule, such modification shall require the  
 3 approval of the planning board \*\*[and the governing body pur-  
 4 suant to subsection b. of section 3 of this act]\*\*. The planning

5 board shall, in deciding whether or not to grant approval of the  
6 modification, take into consideration prevailing economic and  
7 market conditions, anticipated and actual needs for residential  
8 units and nonresidential space within the municipality and the  
9 region, and the availability and capacity of public facilities to  
10 accommodate the proposed development.

1 7. (New section) a. Except as provided hereunder, the developer  
2 shall be required to gain the prior approval of the planning board  
3 ~~and governing body~~ if, after ~~the effective date of the~~  
4 ~~agreement~~ *approval of the general development plan*, the  
5 developer wishes to make any variation in the location of land  
6 uses within the planned development or to increase the density  
7 of residential ~~or nonresidential~~ development *or the floor*  
7A *area ratio of nonresidential development* in any section of the  
7B planned development.

8 b. Any variation in the location of land uses or increase in  
9 density *or floor area ratio* proposed in reaction to a negative  
10 decision of, or condition of development approval imposed by, the  
11 Pinelands Commission pursuant to P. L. 1979, c. 111 (C. 13:18A-1  
12 et seq.) ~~or~~ the Department of Environmental Protection  
13 pursuant to P. L. 1973, c. 185 (C. 13:19-1 et seq.) ~~or the Hacken-~~  
14 ~~sack Meadowlands Development Commission pursuant to P. L.~~  
15 ~~1968, c. 404 (C. 13:17-1 et seq.)~~ shall ~~not require governing~~  
16 ~~body approval pursuant to this act~~ *be approved by the*  
17 *planning board* if the developer can demonstrate, to the satis-  
18 faction of the planning board, that the variation being proposed is  
19 a direct result of such determination by the Pinelands Commis-  
20 sion ~~or~~ *or the* Department of Environmental Protection ~~or~~  
20A ~~Hackensack Meadowlands Development Commission~~, as the case  
20B may be.

21 ~~c.~~ Any municipality may, by ordinance, delegate to the  
22 planning board sole authority to approve any minor variation in  
23 the location of land uses within the planned development or in-  
24 crease in density of residential or nonresidential development in  
25 any section of the planned development. Any ordinance adopted  
26 pursuant to this subsection shall specifically set forth guidelines  
27 and standards as to the extent of variation which is being defined  
28 as minor.

1 8. (New section) a. Except as provided ~~in~~ hereunder,  
2 once a ~~municipal development agreement has been entered~~  
3 ~~into~~ *general development plan has been approved by the*  
4 *planning board*, it may be amended or revised only upon ~~the~~

5 mutual agreement of the municipality and] \*\*application by\*\*  
6 the developer \*\*approved by the planning board\*\*.

7 b. A developer, without violating the terms of the \*\*[agree-  
8 ment]\*\* \*\*approval\*\* pursuant to this act, may, in undertaking  
9 any section of the planned development, reduce the number of  
10 residential units or amounts of nonresidential floor space by no  
11 more than 15% or reduce the residential \*\*[or nonresidential]\*\*  
12 density \*\*or nonresidential floor area ratio\*\* by no more than  
13 15%; provided, however, that a developer may not reduce the  
14 number of residential units to be provided pursuant to P. L. 1985,  
15 c. 222 (C. 52:27D-301 et al.), without prior municipal approval.

1 9. (New section) a. Upon the completion of each section of the  
2 development as set forth in the \*\*[agreement]\*\* \*\*approved  
3 general development plan\*\*, the developer shall notify the \*\*[mu-  
4 nicipal clerk]\*\* \*\*administrative officer\*\*, by certified mail, as  
5 evidence that the developer is fulfilling his obligations under the  
6 \*\*[agreement]\*\* \*\*approved plan\*\*. For the purposes of this sec-  
7 tion, "completion" of any section of the development shall mean  
8 that the developer has acquired a certificate of occupancy for  
9 every residential unit or every nonresidential structure, as set  
10 forth in the \*\*[agreement]\*\* \*\*approved general development  
11 plan\*\* and pursuant to section 15 of P. L. 1975, c. 217 (C.  
12 52:27D-133). If the municipality does not receive such notifica-  
13 tion at the completion of any section of the development, the  
14 municipality shall notify the developer, by certified mail, in order  
15 to determine whether or not the terms of the \*\*[agreement]\*\*  
16 \*\*approved plan\*\* are being complied with.

17 If a developer does not complete any section of the development  
18 within eight months of the date provided for in the \*\*[agree-  
19 ment]\*\* \*\*approved plan\*\*, or if at any time the municipality has  
20 cause to believe that the developer is not fulfilling his obligations  
21 pursuant to the \*\*[agreement]\*\* \*\*approved plan\*\*, the munici-  
22 pality shall notify the developer, by certified mail, and the devel-  
23 oper shall have 10 days within which to give evidence that he is  
24 fulfilling his obligations pursuant to the \*\*[agreement]\*\*  
25 \*\*approved plan\*\*. The municipality thereafter shall conduct a  
26 hearing to determine whether or not the developer is in violation  
27 of the \*\*[agreement]\*\* \*\*approved plan\*\*. If, after such a hear-  
28 ing, the municipality finds good cause to terminate the \*\*[agree-  
29 ment]\*\* \*\*approval\*\*, it shall provide written notice of same to  
30 the developer and the \*\*[agreement]\*\* \*\*approval\*\* shall be  
31 terminated 30 days thereafter.

32 b. In the event that a developer who has **entered into an**  
 33 **agreement** *general development plan approval* does not  
 34 apply for preliminary approval for the planned development which  
 35 is the subject of that **agreement** *general development plan*  
 36 *approval* within five years of the date upon which the general  
 37 development plan has been **determined as complete**  
 38 *approved* by the planning board, the municipality shall have  
 39 cause to terminate the **agreement** *approval*.

1 10. (New section) In the event that a development which is the  
 2 subject of an **agreement** *approved general development*  
 3 *plan* is completed before the end of the term of the **agree-**  
 4 **ment** *approval*, the **agreement** *approval* shall  
 5 terminate with the completion of the development. For the  
 6 purposes of this section, a development shall be considered com-  
 7 plete on the date upon which a certificate of occupancy has been  
 8 issued for the final residential or nonresidential structure in the  
 9 last section of the development in accordance with the timing  
 10 schedule set forth in the **agreement** *approved general*  
 11 *development plan* and the developer has fulfilled all of his  
 12 obligations pursuant to the **agreement** *approval*.

1 11. This act shall take effect immediately, but shall not apply  
 2 to any developer who has received final approval of a site plan  
 3 of subdivision for any section of a planned development prior to  
 4 the effective date of this act.

---

#### LOCAL PLANNING AND ZONING

Enables municipalities to enter into municipal development agree-  
 ments with certain developers.

---

**SENATE, No. 2966**  
**STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 2, 1987

By Senators VAN WAGNER, JACKMAN, McMANIMON and  
GAGLIANO

Referred to Committee on County and Municipal Government

AN ACT providing for municipal development agreements and  
amending and supplementing P. L. 1975, c. 291.

1 *BE IT ENACTED by the Senate and General Assembly of the State*  
2 *of New Jersey:*

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

3 3.1. "Days" means calendar days.

4 "Density" means the permitted number of dwelling units *or*  
5 *nonresidential floor area* per gross area of land to be developed.

6 "Developer" means the legal or beneficial owner or owners of  
7 a lot or of any land proposed to be included in a proposed develop-  
8 ment, including the holder of an option or contract to purchase,  
9 or other person having an enforceable proprietary interest in such  
10 land.

11 "Development" means the division of a parcel of land into two  
12 or more parcels, the construction, reconstruction, conversion, struc-  
13 tural alterations, relocation or enlargement of any building or other  
14 structure, or of any mining excavation or landfill, and any use or  
15 change in the use of any building or other structure, or land or  
16 extension of use of land, for which permission may be required  
17 pursuant to this act.

18 "Development regulation" means a zoning ordinance, subdivi-  
19 sion ordinance, site plan ordinance, official map ordinance or other  
20 municipal regulation of the use and development of land, or amend-  
21 ment thereto adopted and filed pursuant to this act.

22 "Drainage" means the removal of surface water or groundwater  
23 from land by drains, grading or other means and includes control

*Matter printed in italics thus is new matter.*

24 of runoff during and after construction or development to minimize  
 25 erosion and sedimentation, to assure the adequacy of existing and  
 26 proposed culverts and bridges, to induce water recharge into the  
 27 ground where practical, to lessen nonpoint pollution, to maintain  
 28 the integrity of stream channels for their biological functions as  
 29 well as for drainage, and the means necessary for water supply  
 30 preservation or prevention or alleviation of flooding.

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

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

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

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

43 "*General development plan*" means a comprehensive plan for the  
 44 development of a planned development, as provided in section 4,  
 45 of this amendatory and supplementary act (P. L. , c. ; C.  
 46 ).

47 "Governing body" means the chief legislative body of the muni-  
 48 cipality. In municipalities having a board of public works, "gov-  
 49 erning body" means such board.

50 "*Historic district*" means one or more historic sites and inter-  
 51 vening or surrounding property significantly affecting or affected  
 52 by the quality and character of the historic site or sites.

53 "Historic site" means any real property, man-made structure,  
 54 natural object or configuration or any portion or group of the  
 55 foregoing which has been formally designated in the master plan  
 56 as being of historical, archeological, cultural, scenic or architectural  
 57 significance.

58 "Interested party" means: (a) in a criminal or quasi-criminal  
 59 proceeding, any citizen of the State of New Jersey; and (b) in the  
 60 case of a civil proceeding in any court or in an administrative  
 61 proceeding before a municipal agency, any person, whether residing  
 62 within or without the municipality, whose right to use, acquire,  
 63 or enjoy property is or may be affected by any action taken under  
 64 this act, or whose rights to use, acquire, or enjoy property under  
 65 this act, or under any other law of this State or of the United  
 66 States have been denied, violated or infringed by an action or a  
 67 failure to act under this act.



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

70 "Lot" means a designated parcel, tract or area of land estab-  
71 lished by a plat or otherwise, as permitted by law and to be used,  
72 developed or built upon as a unit.

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

3 3.2. "Maintenance guarantee" means any security, other than  
4 cash, which may be accepted by a municipality for the maintenance  
5 of any improvements required by this act.

6 "Major subdivision" means any subdivision not classified as  
7 a minor subdivision.

8 "Master plan" means a composite of one or more written or  
9 graphic proposals for the development of the municipality as set  
10 forth in and adopted pursuant to section 19 of this act.

11 "Mayor" means the chief executive of the municipality, what-  
12 ever his official designation may be, except that in the case of  
13 municipalities governed by municipal council and municipal man-  
14 ager the term "mayor" shall not mean the "municipal manager"  
15 but shall mean the mayor of such municipality.

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

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

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

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

38 **"Municipal development agreement" or "agreement" means a**  
39 **written contract between a municipality and a developer governing**  
40 **the development of a planned development pursuant to this act.**

41 **"Nonconforming lot" means a lot the area, dimension or location**  
42 **of which was lawful prior to the adoption, revision or amendment**  
43 **of a zoning ordinance, but fails to conform to the requirements of**  
44 **the zoning district in which it is located by reason of such adoption,**  
45 **revision or amendment.**

46 **"Nonconforming structure" means a structure the size, dimen-**  
47 **sion or location of which was lawful prior to the adoption, revision**  
48 **or amendment of a zoning ordinance, but which fails to conform to**  
49 **the requirements of the zoning district in which it is located by**  
50 **reasons of such adoption, revision or amendment.**

51 **"Nonconforming use" means a use or activity which was lawful**  
52 **prior to the adoption, revision or amendment of a zoning ordinance,**  
53 **but which fails to conform to the requirements of the zoning dis-**  
54 **trict in which it is located by reasons of such adoption, revision**  
55 **or amendment.**

56 **"Official county map" means the map, with changes and addi-**  
57 **tions thereto, adopted and established, from time to time, by resolu-**  
58 **tion of the board of chosen freeholders of the county pursuant to**  
59 **R. S. 40:27-5.**

60 **"Official map" means a map adopted by ordinance pursuant to**  
61 **article 5.**

62 **"Offsite" means located outside the lot lines of the lot in ques-**  
63 **tion but within the property (of which the lot is a part) which is**  
64 **the subject of a development application or contiguous portion**  
65 **of a street or right-of-way.**

66 **"Off-tract" means not located on the property which is the sub-**  
67 **ject of a development application nor on a contiguous portion of**  
68 **a street or right-of-way.**

69 **"Onsite" means located on the lot in question.**

70 **"On-tract" means located on the property which is the subject**  
71 **of a development application or on a contiguous portion of a street**  
72 **or right-of-way.**

73 **"Open-space" means any parcel or area of land or water essen-**  
74 **tially unimproved and set aside, dedicated, designated or reserved**  
75 **for public or private use or enjoyment or for the use and enjoy-**  
76 **ment of owners and occupants of land adjoining or neighboring**  
77 **such open space; provided that such areas may be improved with**  
78 **only those buildings, structures, streets and offstreet parking and**  
79 **other improvements that are designed to be incidental to the na-**  
80 **tural openness of the land.**

81 *"Qualified developer" means a developer who has submitted a*  
82 *general development plan which the planning board has determined*  
83 *to be complete pursuant to section 5 of this amendatory and*  
84 *supplementary act (P. L. . . . ., c. . . . ., C. . . . . . . . .).*

1 3. (New section) a. Any municipality may enter into a municipal  
2 development agreement with a qualified developer pursuant to  
3 subsection c. of section 5 of this amendatory and supplementary  
4 act.

5 The agreement shall represent a contract between the municipi-  
6 pality and the developer which sets forth the permitted number of  
7 dwelling units, the amount of nonresidential floor space, and the  
8 residential and nonresidential density to comprise the planned  
9 development, in its entirety, according to a schedule which sets  
10 forth the timing of the various sections of the development. The  
11 agreement may also include any other terms negotiated between  
12 the municipality and the developer.

13 In entering into an agreement, the municipality may agree that  
14 notwithstanding any provision of P. L. 1975, c. 291 (C. 40:55D-1  
15 et seq.), or any ordinance or regulation adopted pursuant thereto  
16 after the effective date of the agreement, the planned development  
17 shall be developed in accordance with the terms of that agreement.

18 b. The term of the agreement shall be determined by the  
19 planning board using the guidelines set forth in subsection c. of  
20 this section, except that the term of the agreement shall not exceed  
21 20 years from the date upon which the developer receives final  
22 approval of the first section of the planned development pursuant  
23 to P. L. 1975, c. 291 (C. 40:55D-1 et seq.). The planning board  
24 shall review and, by resolution, approve the proposed agreement  
25 and forward the approved agreement to the governing body. Upon  
26 receipt of the approved agreement from the planning board, the  
27 governing body shall review the proposed agreement and shall,  
28 within 45 days of receiving the agreement from the planning board,  
29 notify the developer regarding either its intent to enter into the  
30 agreement or its reasons for not entering into the agreement. The  
31 governing body shall enter into the agreement by adopting an  
32 ordinance which includes a full text of the agreement to be entered  
33 into.

34 In the event that the governing body or developer proposes to  
35 amend or revise an agreement which has already received planning  
36 board approval, whether upon review of the initial agreement or  
37 upon any subsequent proposal to amend or revise the agreement,  
38 the planning board shall first review and approve any amendment  
39 or revision by resolution and shall then forward the agreement.

40 with any approved amendments and revisions, and a copy of the  
41 resolution, to the governing body. The governing body shall review  
42 the amendments or revisions which have received planning board  
43 approval and indicate by ordinance its approval of those amend-  
44 ments or revisions.

45 c. In making its determination regarding the duration of the  
46 agreement, the planning board shall consider: the number of  
47 dwelling units or amount of nonresidential floor area to be con-  
48 structed, prevailing economic conditions, the timing schedule to be  
49 followed in completing the development and the likelihood of its  
50 fulfillment, the developer's capability of completing the proposed  
51 development, and the contents of the agreement.

1 4. (New section) A general development plan may include, but  
2 not be limited to, the following:

3 a. A general land use plan at a scale of not less than one inch =  
4 1,000 feet indicating the tract area and general locations of the  
5 land uses to be included in the planned development. The total  
6 number of dwelling units and amount of nonresidential floor area  
7 to be provided and proposed land area to be devoted to residential  
8 and nonresidential use shall be set forth. In addition, the proposed  
9 types of nonresidential uses to be included in the planned develop-  
10 ment shall be set forth, and the land area to be occupied by each  
11 proposed use shall be estimated. The density of the entire planned  
12 development shall be set forth, and a residential and a non-  
13 residential density factor shall be provided;

14 b. A circulation plan showing the general location and types of  
15 transportation facilities, including facilities for pedestrian access,  
16 within the planned development and any proposed improvements  
17 to the existing transportation system outside the planned develop-  
18 ment;

19 c. An open space plan showing the proposed land area and  
20 general location of parks and any other land area to be set aside  
21 for conservation and recreational purposes and a general descrip-  
22 tion of improvements proposed to be made thereon, including a  
23 plan for the operation and maintenance of parks and recreational  
24 lands;

25 d. A utility plan indicating the need for and showing the pro-  
26 posed location of sewage and water lines, any drainage facilities  
27 necessitated by the physical characteristics of the site, proposed  
28 methods for handling solid waste disposal, and a plan for the  
29 operation and maintenance of proposed utilities;

30 e. A storm water management plan setting forth the proposed  
31 method of controlling and managing storm water on the site;

32 f. An environmental inventory including a general description  
33 of the vegetation, soils, topography, geology, surface hydrology,  
34 climate and cultural resources of the site, existing man-made  
35 structures or features and the probable impact of the development  
36 on the environmental attributes of the site;

37 g. A community facility plan indicating the scope and type of  
38 supporting community facilities which may include, but not be  
39 limited to, educational or cultural facilities, historic sites, libraries,  
40 hospitals, firehouses, and police stations;

41 h. A housing plan outlining the number of housing units to be  
42 provided and the extent to which any housing obligation assigned  
43 to the municipality pursuant to P. L. 1985, c. 222 (C. 52:27D-301  
44 et al.) will be fulfilled by the development;

45 i. A local service plan indicating those public services which  
46 the applicant proposes to provide and which may include, but not  
47 be limited to, water, sewer, cable and solid waste disposal;

48 j. A fiscal report describing the anticipated demand on municipal  
49 services to be generated by the planned development and any  
50 other financial impacts to be faced by municipality or school dis-  
51 tricts as a result of the completion of the planned development.  
52 The fiscal report shall also include a detailed projection of property  
53 tax revenues which will accrue to the county, municipality and  
54 school district according to the timing schedule provided under  
55 subsection k. of this section, and following the completion of the  
56 planned development in its entirety; and

57 k. A proposed timing schedule in the case of a planned develop-  
58 ment whose construction is contemplated over a period of years,  
59 including any terms or conditions which are intended to protect  
60 the interests of the public and of the residents who occupy any  
61 section of the planned development prior to the completion of the  
62 development in its entirety.

1 5. (New section) Any developer of a parcel of land greater than  
2 100 acres in size for which the developer is seeking approval of  
3 a planned development pursuant to P. L. 1975, c. 291 (C. 40:55D-1  
4 et seq.) may submit a general development plan to the planning  
5 board prior to the granting of preliminary approval of that  
6 development by the planning board pursuant to section 34 of P. L.  
7 1975, c. 291 (C. 40:55D-46) or section 36 of P. L. 1975, c. 291  
8 (C. 40:55D-48).

9 b. A general development plan shall be complete for the purposes  
10 of this act when so certified by the planning board. In the event  
11 that the general development plan lacks information indicated

12 on a checklist adopted by the municipality and provided to the  
13 developer, the planning board shall notify the developer within 60  
14 days of receiving the general development plan, in writing, of the  
15 deficiencies in the general development plan. Nothing herein shall  
16 be construed as diminishing the developer's obligation to prove  
17 in the general development plan process that the developer is  
18 entitled to a finding of the plan's completeness. The planning  
19 board may subsequently require correction of any information  
20 found to be in error and submission of additional information not  
21 specified on the checklist or any revisions in the accompanying  
22 documents, as are reasonably necessary to make an informed  
23 decision as to whether the requirements necessary for a finding  
24 of completeness have been met. The general development plan  
25 shall not be deemed incomplete for lack of any such additional  
26 information or any revisions in the accompanying documents so  
27 required by the planning board.

28 If the planning board does not notify the developer that the  
29 general development plan lacks information, the plan shall be  
30 deemed complete 60 days after its receipt by the planning board.  
31 If the planning board requests further information, the general  
32 development plan shall be deemed complete 60 days after the last  
33 request for further information is made by the planning board.

34 c. The finding of completeness of a general development plan  
35 regarding a planned development by the planning board shall  
36 qualify the developer to enter into a municipal development agree-  
37 ment with a municipality pursuant to section 3 of this amendatory  
38 and supplementary act. The finding of completeness of a general  
39 development plan shall not in any way diminish the developer's  
40 obligation to prove that he is entitled to preliminary or final  
41 approval of that planned development under any ordinance adopted  
42 pursuant to P. L. 1975, c. 291 (C. 40:55D-1 et seq.) providing for  
43 approval of a subdivision or site plan.

1 6. (New section) In the event that the developer seeks to modify  
2 the proposed timing schedule, such modification shall require the  
3 approval of the planning board and the governing body pursuant  
4 to subsection b. of section 3 of this act. The planning board shall,  
5 in deciding whether or not to grant approval of the modification,  
6 take into consideration prevailing economic and market conditions,  
7 anticipated and actual needs for residential units and nonresi-  
8 dential space within the municipality and the region, and the  
9 availability and capacity of public facilities to accommodate the  
10 proposed development.

1 7. (New section) a. Except as provided hereunder, the developer  
2 shall be required to gain the prior approval of the planning board  
3 and governing body if, after the effective date of the agreement,  
4 the developer wishes to make any variation in the location of land  
5 uses within the planned development or to increase the density  
6 of residential or nonresidential development in any section of the  
7 planned development.

8 b. Any variation in the location of land uses or increase in  
9 density proposed in reaction to a negative decision of, or condition  
10 of development approval imposed by, the Pinelands Commission  
11 pursuant to P. L. 1979, c. 111 (C. 13:18A-1 et seq.), the Department  
12 of Environmental Protection pursuant to P. L. 1973, c. 185 (C.  
13 13:19-1 et seq.) or the Hackensack Meadowlands Development  
14 Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1 et seq.)  
15 shall not require governing body approval pursuant to this act  
16 if the developer can demonstrate, to the satisfaction of the plan-  
17 ning board, that the variation being proposed is a direct result  
18 of such determination by the Pinelands Commission, Department  
19 of Environmental Protection or Hackensack Meadowlands Develop-  
20 ment Commission, as the case may be.

21 c. Any municipality may, by ordinance, delegate to the planning  
22 board sole authority to approve any minor variation in the location  
23 of land uses within the planned development or increase in density  
24 of residential or nonresidential development in any section of the  
25 planned development. Any ordinance adopted pursuant to this  
26 subsection shall specifically set forth guidelines and standards as  
27 to the extent of variation which is being defined as minor.

1 8. (New section) a. Except as provided in hereunder, once a  
2 municipal development agreement has been entered into, it may be  
3 amended or revised only upon the mutual agreement of the  
4 municipality and the developer.

5 b. A developer, without violating the terms of the agreement  
6 pursuant to this act, may, in undertaking any section of the planned  
7 development, reduce the number of residential units or amounts  
8 of nonresidential floor space by no more than 15% or reduce the  
9 residential or nonresidential density by no more than 15%; pro-  
10 vided, however, that a developer may not reduce the number of  
11 residential units to be provided pursuant to P. L. 1985, c. 222  
12 (C. 52:27D-301 et al.), without prior municipal approval.

1 9. (New section) a. Upon the completion of each section of the  
2 development as set forth in the agreement, the developer shall  
3 notify the municipal clerk, by certified mail, as evidence that the  
4 developer is fulfilling his obligations under the agreement. For

5 the purposes of this section, "completion" of any section of the  
6 development shall mean that the developer has acquired a cer-  
7 tificate of occupancy for every residential unit or every nonresi-  
8 dential structure, as set forth in the agreement and pursuant to  
9 section 15 of P. L. 1975, c. 217 (C. 52:27D-133). If the munici-  
10 pality does not receive such notification at the completion of any  
11 section of the development, the municipality shall notify the  
12 developer, by certified mail, in order to determine whether or  
13 not the terms of the agreement are being complied with.

14 If a developer does not complete any section of the development  
15 within eight months of the date provided for in the agreement,  
16 or if at any time the municipality has cause to believe that the  
17 developer is not fulfilling his obligations pursuant to the agree-  
18 ment, the municipality shall notify the developer, by certified mail,  
19 and the developer shall have 10 days within which to give evidence  
20 that he is fulfilling his obligations pursuant to the agreement. The  
21 municipality thereafter shall conduct a hearing to determine  
22 whether or not the developer is in violation of the agreement. If,  
23 after such a hearing, the municipality finds good cause to terminate  
24 the agreement, it shall provide written notice of same to the  
25 developer and the agreement shall be terminated 30 days there-  
26 after.

27 b. In the event that a developer who has entered into an agree-  
28 ment does not apply for preliminary approval for the planned  
29 development which is the subject of that agreement within five  
30 years of the date upon which the general development plan has  
31 been determined as complete by the planning board, the munici-  
32 pality shall have cause to terminate the agreement.

1 10. (New section) In the event that a development which is the  
2 subject of an agreement is completed before the end of the term  
3 of the agreement, the agreement shall terminate with the comple-  
4 tion of the development. For the purposes of this section, a de-  
5 velopment shall be considered complete on the date upon which  
6 a certificate of occupancy has been issued for the final residential  
7 or nonresidential structure in the last section of the development  
8 in accordance with the timing schedule set forth in the agreement  
9 and the developer has fulfilled all of his obligations pursuant to  
10 the agreement.

1 11. This act shall take effect immediately, but shall not apply  
2 to any developer who has received final approval of a site plan  
3 of subdivision for any section of a planned development prior to  
4 the effective date of this act.



## SPONSORS' STATEMENT

This bill would allow any municipality to enter into a municipal development agreement with a qualified developer regarding the development of a parcel of land, as provided hereunder.

A qualified developer is defined in the bill as one who has submitted a complete general development plan, as certified by the planning board, regarding a development on a parcel of land greater than 100 acres in size, for which the developer is seeking approval of a planned development pursuant to P. L. 1975, c. 291 (C. 40:55D-1 et seq.).

The municipal development agreement is to represent an agreement between the municipality and the developer whereby the developer agrees to complete the planned development according to a specified timing schedule. The agreement is also to include any other terms negotiated between the developer and the municipality. Such terms may, for example, include off-tract contributions to be made by the developer and a course of action to be followed by both parties in the event that the developer is unable to complete the development as anticipated in the development application.

In entering into a municipal development agreement, the municipality may agree that notwithstanding any changes made to the master plan, zoning ordinance or official map subsequent to the conclusion of the municipal development agreement, those planning and zoning ordinances in effect at the time the agreement was concluded shall prevail for the duration of the agreement.

A municipal development agreement may be for a maximum 20 year duration subject to planning board determination, based on criteria set forth in the bill. The planning board is required to approve the agreement, by resolution, and to forward the agreement to the municipal governing body for approval, by ordinance. The agreement shall be binding on both parties and may only be revised or amended upon the mutual agreement of the municipality and the developer. Any revision or amendment to the agreement must gain the approval of both the planning board and the governing board, with certain exception which are set forth in section 7 of the bill.

Upon the completion of each section of the development and receipt of a certificate of occupancy for the last structure in that section, the developer is to notify the municipality so that the municipality is able to monitor compliance on the part of the developer. If the municipality does not receive timely notification of the completion of any section of the development, as set forth

in the bill, the municipality is required to notify the developer to inquire as to the progress of the development. If a developer does not obtain a certificate of occupancy for any section of the development within eight months of the date provided for in the agreement or if the municipality has cause to believe that the terms of the agreement are not being complied with, the municipality shall notify the developer and hold a hearing to determine whether or not the developer is in compliance. If the municipality finds that the developer is not in compliance, the municipality may terminate the agreement within 30 days after providing written notification of same to the developer.

Additionally, the municipality shall have cause to terminate the agreement if the developer does not apply for preliminary approval for the planned development which is the subject of the municipal development agreement within five years of the date upon which the general development plan has been certified as complete by the planning board.

Finally, the bill provides that the agreement shall be terminated on the date upon which the developer receives a certificate of occupancy for the last structure in the last section of the development, even though the term of the development agreement has not otherwise elapsed.

---

#### LOCAL PLANNING AND ZONING

Enables municipalities to enter into municipal development agreements with certain developers.

---

**STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 2, 1987

By Senators VAN WAGNER, JACKMAN, McMANIMON and  
GAGLIANO

Referred to Committee on County and Municipal Government

AN ACT providing for municipal development agreements and  
amending and supplementing P. L. 1975, c. 291.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

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

3 3.1. "Days" means calendar days.

4 "Density" means the permitted number of dwelling units *or*  
5 *nonresidential floor area* per gross area of land to be developed.

6 "Developer" means the legal or beneficial owner or owners of  
7 a lot or of any land proposed to be included in a proposed develop-  
8 ment, including the holder of an option or contract to purchase,  
9 or other person having an enforceable proprietary interest in such  
10 land.

11 "Development" means the division of a parcel of land into two  
12 or more parcels, the construction, reconstruction, conversion, struc-  
13 tural alterations, relocation or enlargement of any building or other  
14 structure, or of any mining excavation or landfill, and any use or  
15 change in the use of any building or other structure, or land or  
16 extension of use of land, for which permission may be required  
17 pursuant to this act.

18 "Development regulation" means a zoning ordinance, subdivi-  
19 sion ordinance, site plan ordinance, official map ordinance or other  
20 municipal regulation of the use and development of land, or amend-  
21 ment thereto adopted and filed pursuant to this act.

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted February 19, 1987.

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

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

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

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

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

43 "*General development plan*" means a comprehensive plan for the  
 44 development of a planned development, as provided in section 4,  
 45 of this amendatory and supplementary act (P. L. , c. ; C.  
 46 ).

47 "Governing body" means the chief legislative body of the muni-  
 48 cipality. In municipalities having a board of public works, "gov-  
 49 erning body" means such board.

50 "*Historic district*" means one or more historic sites and inter-  
 51 vening or surrounding property significantly affecting or affected  
 52 by the quality and character of the historic site or sites.

53 "Historic site" means any real property, man-made structure,  
 54 natural object or configuration or any portion or group of the  
 55 foregoing which has been formally designated in the master plan  
 56 as being of historical, archeological, cultural, scenic or architectural  
 57 significance.

58 "Interested party" means: (a) in a criminal or quasi-criminal  
 59 proceeding, any citizen of the State of New Jersey; and (b) in the  
 60 case of a civil proceeding in any court or in an administrative  
 61 proceeding before a municipal agency, any person, whether residing  
 62 within or without the municipality, whose right to use, acquire,  
 63 or enjoy property is or may be affected by any action taken under  
 64 this act, or whose rights to use, acquire, or enjoy property under  
 65 this act, or under any other law of this State or of the United

66 States have been denied, violated or infringed by an action or a  
67 failure to act under this act.

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

70 "Lot" means a designated parcel, tract or area of land estab-  
71 lished by a plat or otherwise, as permitted by law and to be used,  
72 developed or built upon as a unit.

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

3 3.2. "Maintenance guarantee" means any security, other than  
4 cash, which may be accepted by a municipality for the maintenance  
5 of any improvements required by this act.

6 "Major subdivision" means any subdivision not classified as  
7 a minor subdivision.

8 "Master plan" means a composite of one or more written or  
9 graphic proposals for the development of the municipality as set  
10 forth in and adopted pursuant to section 19 of this act.

11 "Mayor" means the chief executive of the municipality, what-  
12 ever his official designation may be, except that in the case of  
13 municipalities governed by municipal council and municipal man-  
14 ager the term "mayor" shall not mean the "municipal manager"  
15 but shall mean the mayor of such municipality.

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

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

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

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

38 *"Municipal development agreement" or "agreement" means a*  
39 *written contract between a municipality and a developer governing*  
40 *the development of a planned development pursuant to this act.*

41 *"Nonconforming lot" means a lot the area, dimension or location*  
42 *of which was lawful prior to the adoption, revision or amendment*  
43 *of a zoning ordinance, but fails to conform to the requirements of*  
44 *the zoning district in which it is located by reason of such adoption,*  
45 *revision or amendment.*

46 *"Noneonforming structure" means a structure the size, dimen-*  
47 *sion or location of which was lawful prior to the adoption, revision*  
48 *or amendment of a zoning ordinance, but which fails to conform to*  
49 *the requirements of the zoning district in which it is located by*  
50 *reasons of such adoption, revision or amendment.*

51 *"Nonconforming use" means a use or activity which was lawful*  
52 *prior to the adoption, revision or amendment of a zoning ordinance,*  
53 *but which fails to conform to the requirements of the zoning dis-*  
54 *trict in which it is located by reasons of such adoption, revision*  
55 *or amendment.*

56 *"Official county map" means the map, with changes and addi-*  
57 *tions thereto, adopted and established, from time to time, by resolu-*  
58 *tion of the board of chosen freeholders of the county pursuant to*  
59 *R. S. 40:27-5.*

60 *"Official map" means a map adopted by ordinance pursuant to*  
61 *article 5.*

62 *"Offsite" means located outside the lot lines of the lot in ques-*  
63 *tion but within the property (of which the lot is a part) which is*  
64 *the subject of a development application or contiguous portion*  
65 *of a street or right-of-way.*

66 *"Off-tract" means not located on the property which is the sub-*  
67 *ject of a development application nor on a contiguous portion of*  
68 *a street or right-of-way.*

69 *"Onsite" means located on the lot in question.*

70 *"On-tract" means located on the property which is the subject*  
71 *of a development application or on a contiguous portion of a street*  
72 *or right-of-way.*

73 *"Open-space" means any parcel or area of land or water essen-*  
74 *tially unimproved and set aside, dedicated, designated or reserved*  
75 *for public or private use or enjoyment or for the use and enjoy-*  
76 *ment of owners and occupants of land adjoining or neighboring*  
77 *such open space; provided that such areas may be improved with*  
78 *only those buildings, structures, streets and offstreet parking and*  
79 *other improvements that are designed to be incidental to the na-*  
80 *tural openness of the land.*

81 *"Qualified developer" means a developer who has submitted a*  
82 *general development plan which the planning board has determined*  
83 *to be complete pursuant to section 5 of this amendatory and*  
84 *supplementary act (P. L. . . . ., c. . . . ., C. . . . . . . . .).*

1 3. (New section) a. Any municipality may enter into a municipal  
2 development agreement with a qualified developer pursuant to  
3 subsection c. of section 5 of this amendatory and supplementary  
4 act.

5 The agreement shall represent a contract between the munici-  
6 pality and the developer which sets forth the permitted number of  
7 dwelling units, the amount of nonresidential floor space, and the  
8 residential and nonresidential density to comprise the planned  
9 development, in its entirety, according to a schedule which sets  
10 forth the timing of the various sections of the development. The  
11 agreement may also include any other terms negotiated between  
12 the municipality and the developer.

13 In entering into an agreement, the municipality may agree that  
14 notwithstanding any provision of P. L. 1975, c. 291 (C. 40:55D-1  
15 et seq.), or any ordinance or regulation adopted pursuant thereto  
16 after the effective date of the agreement, the planned development  
17 shall be developed in accordance with the terms of that agreement.

18 b. The term of the agreement shall be determined by the  
19 planning board using the guidelines set forth in subsection c. of  
20 this section, except that the term of the agreement shall not exceed  
21 20 years from the date upon which the developer receives final  
22 approval of the first section of the planned development pursuant  
23 to P. L. 1975, c. 291 (C. 40:55D-1 et seq.). The planning board  
24 shall review and, by resolution, approve the proposed agreement  
25 and forward the approved agreement to the governing body. Upon  
26 receipt of the approved agreement from the planning board, the  
27 governing body shall review the proposed agreement and shall,  
28 within 45 days of receiving the agreement from the planning board,  
29 notify the developer regarding either its intent to enter into the  
30 agreement or its reasons for not entering into the agreement. The  
31 governing body shall enter into the agreement by adopting an  
32 ordinance which includes a full text of the agreement to be entered  
33 into.

34 In the event that the governing body or developer proposes to  
35 amend or revise an agreement which has already received planning  
36 board approval, whether upon review of the initial agreement or  
37 upon any subsequent proposal to amend or revise the agreement,  
38 the planning board shall first review and approve any amendment  
39 or revision by resolution and shall then forward the agreement,

40 with any approved amendments and revisions, and a copy of the  
41 resolution, to the governing body. The governing body shall review  
42 the amendments or revisions which have received planning board  
43 approval and indicate by ordinance its approval of those amend-  
44 ments or revisions.

45 c. In making its determination regarding the duration of the  
46 agreement, the planning board shall consider: the number of  
47 dwelling units or amount of nonresidential floor area to be con-  
48 structed, prevailing economic conditions, the timing schedule to be  
49 followed in completing the development and the likelihood of its  
50 fulfillment, the developer's capability of completing the proposed  
51 development, and the contents of the agreement.

1 4. (New section) A general development plan may include, but  
2 not be limited to, the following:

3 a. A general land use plan at a scale of not less than one inch =  
4 1,000 feet indicating the tract area and general locations of the  
5 land uses to be included in the planned development. The total  
6 number of dwelling units and amount of nonresidential floor area  
7 to be provided and proposed land area to be devoted to residential  
8 and nonresidential use shall be set forth. In addition, the proposed  
9 types of nonresidential uses to be included in the planned develop-  
10 ment shall be set forth, and the land area to be occupied by each  
11 proposed use shall be estimated. The density of the entire planned  
12 development shall be set forth, and a residential and a non-  
13 residential density factor shall be provided;

14 b. A circulation plan showing the general location and types of  
15 transportation facilities, including facilities for pedestrian access,  
16 within the planned development and any proposed improvements  
17 to the existing transportation system outside the planned develop-  
18 ment;

19 c. An open space plan showing the proposed land area and  
20 general location of parks and any other land area to be set aside  
21 for conservation and recreational purposes and a general descrip-  
22 tion of improvements proposed to be made thereon, including a  
23 plan for the operation and maintenance of parks and recreational  
24 lands;

25 d. A utility plan indicating the need for and showing the pro-  
26 posed location of sewage and water lines, any drainage facilities  
27 necessitated by the physical characteristics of the site, proposed  
28 methods for handling solid waste disposal, and a plan for the  
29 operation and maintenance of proposed utilities;

30 e. A storm water management plan setting forth the proposed  
31 method of controlling and managing storm water on the site;



32 f. An environmental inventory including a general description  
33 of the vegetation, soils, topography, geology, surface hydrology,  
34 climate and cultural resources of the site, existing man-made  
35 structures or features and the probable impact of the development  
36 on the environmental attributes of the site;

37 g. A community facility plan indicating the scope and type of  
38 supporting community facilities which may include, but not be  
39 limited to, educational or cultural facilities, historic sites, libraries,  
40 hospitals, firehouses, and police stations;

41 h. A housing plan outlining the number of housing units to be  
42 provided and the extent to which any housing obligation assigned  
43 to the municipality pursuant to P. L. 1985, c. 222 (C. 52:27D-301  
44 et al.) will be fulfilled by the development;

45 i. A local service plan indicating those public services which  
46 the applicant proposes to provide and which may include, but not  
47 be limited to, water, sewer, cable and solid waste disposal;

48 j. A fiscal report describing the anticipated demand on municipal  
49 services to be generated by the planned development and any  
50 other financial impacts to be faced by municipality or school dis-  
51 tricts as a result of the completion of the planned development.  
52 The fiscal report shall also include a detailed projection of property  
53 tax revenues which will accrue to the county, municipality and  
54 school district according to the timing schedule provided under  
55 subsection k. of this section, and following the completion of the  
56 planned development in its entirety; and

57 k. A proposed timing schedule in the case of a planned develop-  
58 ment whose construction is contemplated over a period of years,  
59 including any terms or conditions which are intended to protect  
60 the interests of the public and of the residents who occupy any  
61 section of the planned development prior to the completion of the  
62 development in its entirety.

1 5. (New section) Any developer of a parcel of land greater than  
2 100 acres in size for which the developer is seeking approval of  
3 a planned development pursuant to P. L. 1975, c. 291 (C. 40:55D-1  
4 et seq.) may submit a general development plan to the planning  
5 board prior to the granting of preliminary approval of that  
6 development by the planning board pursuant to section 34 of P. L.  
7 1975, c. 291 (C. 40:55D-46) or section 36 of P. L. 1975, c. 291  
8 (C. 40:55D-48).

9 b. A general development plan shall be complete for the purposes  
10 of this act when so certified by the planning board. In the event  
11 that the general development plan lacks information indicated  
12 on a checklist adopted by the municipality and provided to the

13 developer, the planning board shall notify the developer within 60  
14 days of receiving the general development plan, in writing, of the  
15 deficiencies in the general development plan. Nothing herein shall  
16 be construed as diminishing the developer's obligation to prove  
17 in the general development plan process that the developer is  
18 entitled to a finding of the plan's completeness. The planning  
19 board may subsequently require correction of any information  
20 found to be in error and submission of additional information not  
21 specified on the checklist or any revisions in the accompanying  
22 documents, as are reasonably necessary to make an informed  
23 decision as to whether the requirements necessary for a finding  
24 of completeness have been met. The general development plan  
25 shall not be deemed incomplete for lack of any such additional  
26 information or any revisions in the accompanying documents so  
27 required by the planning board.

28 If the planning board does not notify the developer that the  
29 general development plan lacks information, the plan shall be  
30 deemed complete 60 days after its receipt by the planning board.  
31 If the planning board requests further information, the general  
32 development plan shall be deemed complete 60 days after the last  
33 request for further information is made by the planning board.

34 c. The finding of completeness of a general development plan  
35 regarding a planned development by the planning board shall  
36 qualify the developer to enter into a municipal development agree-  
37 ment with a municipality pursuant to section 3 of this amendatory  
38 and supplementary act. The finding of completeness of a general  
39 development plan shall not in any way diminish the developer's  
40 obligation to prove that he is entitled to preliminary or final  
41 approval of that planned development under any ordinance adopted  
42 pursuant to P. L. 1975, c. 291 (C. 40:55D-1 et seq.) providing for  
43 approval of a subdivision or site plan.

1 6. (New section) In the event that the developer seeks to modify  
2 the proposed timing schedule, such modification shall require the  
3 approval of the planning board and the governing body pursuant  
4 to subsection b. of section 3 of this act. The planning board shall  
5 in deciding whether or not to grant approval of the modification,  
6 take into consideration prevailing economic and market conditions,  
7 anticipated and actual needs for residential units and nonresi-  
8 dential space within the municipality and the region, and the  
9 availability and capacity of public facilities to accommodate the  
10 proposed development.

1 7. (New section) a. Except as provided hereunder, the developer  
2 shall be required to gain the prior approval of the planning board  
3 and governing body if, after the effective date of the agreement,

4 the developer wishes to make any variation in the location of land  
5 uses within the planned development or to increase the density  
6 of residential or nonresidential development in any section of the  
7 planned development.

8 b. Any variation in the location of land uses or increase in  
9 density proposed in reaction to a negative decision of, or condition  
10 of development approval imposed by, the Pinelands Commission  
11 pursuant to P. L. 1979, c. 111 (C. 13:18A-1 et seq.) \***[.]**\* \*or\* the  
12 Department of Environmental Protection pursuant to P. L. 1973,  
13 c. 185 (C. 13:19-1 et seq.) \***[.]**\* \*or the Hackensack Meadowlands De-  
14 velopment Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1  
15 et seq.)\* shall not require governing body approval pursuant to  
16 this act if the developer can demonstrate, to the satisfaction of the  
17 planning board, that the variation being proposed is a direct result  
18 of such determination by the Pinelands Commission \***[.]**\* \*or the\*  
19 Department of Environmental Protection \***[.]**\* \*or Hackensack Mead-  
20 owlands Development Commission\***[.]**\*, as the case may be.

21 c. Any municipality may, by ordinance, delegate to the planning  
22 board sole authority to approve any minor variation in the location  
23 of land uses within the planned development or increase in density  
24 of residential or nonresidential development in any section of the  
25 planned development. Any ordinance adopted pursuant to this  
26 subsection shall specifically set forth guidelines and standards as  
27 to the extent of variation which is being defined as minor.

1 8. (New section) a. Except as provided in hereunder, once a  
2 municipal development agreement has been entered into, it may be  
3 amended or revised only upon the mutual agreement of the  
4 municipality and the developer.

5 b. A developer, without violating the terms of the agreement  
6 pursuant to this act, may, in undertaking any section of the planned  
7 development, reduce the number of residential units or amounts  
8 of nonresidential floor space by no more than 15% or reduce the  
9 residential or nonresidential density by no more than 15%; pro-  
10 vided, however, that a developer may not reduce the number of  
11 residential units to be provided pursuant to P. L. 1985, c. 222  
12 (C. 52:27D-301 et al.), without prior municipal approval.

1 9. (New section) a. Upon the completion of each section of the  
2 development as set forth in the agreement, the developer shall  
3 notify the municipal clerk, by certified mail, as evidence that the  
4 developer is fulfilling his obligations under the agreement. For  
5 the purposes of this section, "completion" of any section of the  
6 development shall mean that the developer has acquired a cer-  
7 tificate of occupancy for every residential unit or every nonresi-  
8 dential structure, as set forth in the agreement and pursuant to

9 section 15 of P. L. 1975, c. 217 (C. 52:27D-133). If the municipi-  
10 pality does not receive such notification at the completion of any  
11 section of the development, the municipality shall notify the  
12 developer, by certified mail, in order to determine whether or  
13 not the terms of the agreement are being complied with.

14 If a developer does not complete any section of the development  
15 within eight months of the date provided for in the agreement,  
16 or if at any time the municipality has cause to believe that the  
17 developer is not fulfilling his obligations pursuant to the agree-  
18 ment, the municipality shall notify the developer, by certified mail,  
19 and the developer shall have 10 days within which to give evidence  
20 that he is fulfilling his obligations pursuant to the agreement. The  
21 municipality thereafter shall conduct a hearing to determine  
22 whether or not the developer is in violation of the agreement. If,  
23 after such a hearing, the municipality finds good cause to terminate  
24 the agreement, it shall provide written notice of same to the  
25 developer and the agreement shall be terminated 30 days there-  
26 after.

27 b. In the event that a developer who has entered into an agree-  
28 ment does not apply for preliminary approval for the planned  
29 development which is the subject of that agreement within five  
30 years of the date upon which the general development plan has  
31 been determined as complete by the planning board, the munic-  
32 pality shall have cause to terminate the agreement.

1 10. (New section) In the event that a development which is the  
2 subject of an agreement is completed before the end of the term  
3 of the agreement, the agreement shall terminate with the comple-  
4 tion of the development. For the purposes of this section, a de-  
5 velopment shall be considered complete on the date upon which  
6 a certificate of occupancy has been issued for the final residential  
7 or nonresidential structure in the last section of the development  
8 in accordance with the timing schedule set forth in the agreement  
9 and the developer has fulfilled all of his obligations pursuant to  
10 the agreement.

1 11. This act shall take effect immediately, but shall not apply  
2 to any developer who has received final approval of a site plan  
3 of subdivision for any section of a planned development prior to  
4 the effective date of this act.

---

#### LOCAL PLANNING AND ZONING

Enables municipalities to enter into municipal development agree-  
ments with certain developers.

---

SENATE COUNTY AND MUNICIPAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**SENATE, No. 2966**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 19, 1987

The Senate County and Municipal Government Committee reports favorably and with committee amendment Senate Bill No. 2966.

Senate Bill No. 2966 Sca would allow any municipality to enter into a municipal development agreement with a qualified developer regarding the development of a parcel of land, as provided hereunder.

A qualified developer is defined in the bill as one who has submitted a complete general development plan, as certified by the planning board, regarding a development on a parcel of land greater than 100 acres in size, for which the developer is seeking approval of a planned development pursuant to P. L. 1975, c. 291 (C. 40:55D-1 et seq.).

The municipal development agreement is to represent an agreement between the municipality and the developer whereby the developer agrees to complete the planned development according to a specified timing schedule. The agreement is also to include any other terms negotiated between the developer and the municipality. Such terms may, for example, include off-tract contributions to be made by the developer and a course of action to be followed by both parties in the event that the developer is unable to complete the development as anticipated in the development application.

In entering into a municipal development agreement, the municipality may agree that notwithstanding any changes made to the master plan, zoning ordinance or official map subsequent to the conclusion of the municipal development agreement, those planning and zoning ordinances in effect at the time the agreement was concluded shall prevail for the duration of the agreement.

A municipal development agreement may be for a maximum 20 year duration subject to planning board determination, based on criteria set forth in the bill. The agreement shall be binding on both parties and may only be revised or amended upon the mutual agreement of the municipality and the developer. Any revision or amendment to the agreement must gain the approval of both the planning board and the

governing body, with certain exceptions which are set forth in section 7 of the bill.

Upon the completion of each section of the development and receipt of a certificate of occupancy for the last structure in that section, the developer is to notify the municipality so that the municipality is able to monitor compliance on the part of the developer. If the municipality does not receive timely notification of the completion of any section of the development, as set forth in the bill, the municipality is required to notify the developer to inquire as to the progress of the development. If a developer does not obtain a certificate of occupancy for any section of the development within eight months of the date provided for in the agreement or if the municipality has cause to believe that the terms of the agreement are not being complied with, the municipality shall notify the developer and hold a hearing to determine whether or not the developer is in compliance. If the municipality finds that the developer is not in compliance, the municipality may terminate the agreement within 30 days after providing written notification of same to the developer.

Additionally, the municipality shall have cause to terminate the agreement if the developer does not apply for preliminary approval for the planned development which is the subject of the municipal development agreement within five years of the date upon which the general development plan has been certified as complete by the planning board.

Finally, the bill provides that the agreement shall be terminated on the date upon which the developer receives a certificate of occupancy for the last structure in the last section of the development, even though the term of the development agreement has not otherwise elapsed.

---

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

April 27, 1987

SENATE BILL NO. 2966 (OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 2966 (OCR) with my objections for reconsideration.

This bill would amend and supplement the Municipal Land Use Law to authorize municipalities to enter into general development plans for planned developments of more than 100 acres. A general development plan would precede preliminary subdivision plat or preliminary site plan approval and, if approved by the municipality, would have vested rights against subsequent changes in municipal ordinances.

The purpose of this bill in permitting large-scale developers to obtain vested rights is acceptable given the expenditures they plan to make over the course of several years in development of their property. Unfortunately, the technique utilized by this bill is not consistent with the scheme set forth in the Municipal Land Use Law now in force in New Jersey.

The bill requires the local planning board to approve any general development plan that is complete as to certain categories of information specified in the bill, regardless of what the planning board thinks about the merits of the proposed planned development and its relationship to the municipal master plan. The planning board makes a substantive decision only on the length of the agreement. The bill goes on to stipulate that a general development plan approved in this manner should be forwarded to the governing body for adoption as an ordinance. The governing body is required to give its reasons if it rejects the general development plan but not if it approves it.

The Municipal Land Use Law, currently operative in this State, requires that a municipal zoning ordinance or amendment be substantially consistent with or designed to effectuate the land use and housing elements of the municipal master plan. Before adopting any land use ordinance or amendment, the governing body is required to provide a copy to the planning board for recommendations and identification of any inconsistencies with the master plan. The governing body can only adopt an ordinance or amendment inconsistent with the master plan or planning board recommendations if the governing body states on the public record the reasons why the ordinance or amendment is superior to the master plan provisions or planning board recommendations and the governing body adopts

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

the inconsistent ordinance or amendment by a vote of a majority of its full authorized membership.

The amendments I recommend in this message provide for vested rights for general development plans upon approval by the planning board in accordance with ordinance provisions adopted by the governing body under the Municipal Land Use Law. Approval would be granted by the planning board consistent with the master plan and the zoning ordinance. Thus, my recommendations strengthen this bill by permitting vested rights for certain large-scale developers consistent with the scheme that now exists in the Municipal Land Use Law.

I am suggesting that a general development plan could include a written agreement between the municipality and the developer relating to the planned development.

I am also recommending several technical amendments to the bill, including returning to the current definition of "density" in the Municipal Land Use Law. Modification would cause confusion in other sections of the statute.

I herewith return Senate Bill No. 2966 (OCR) and recommend that it be amended as follows:

Page 1, Section 1, Lines 4-5:

Delete "or nonresidential floor area"

Pages 3-5, Section 2, Lines 1-84:

Delete section in its entirety and insert a new section: "2. Section 29.1 of P.L. 1975, c.291 (C.40:55D-39) is amended to read as follows: 29.1 An ordinance requiring approval by the planning board of either subdivisions or site plans or both may include the following:

a. Provisions for off-tract water, sewer, drainage, and street improvements which are necessitated by a subdivision or land development, subject to the provisions of section 30;

b. Provisions for standards encouraging and promoting flexibility, and economy in layout and design through the use of planned unit development, planned unit residential development and residential cluster; provided that such standards shall be appropriate to the type of



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

3

development permitted; and provided further that the ordinance shall set forth the limits and extent of any special provisions applicable to such planned developments, so that the manner in which such special provisions differ from the standards otherwise applicable to subdivisions or site plans can be determined;

c. Provisions for planned development:

(1) [Setting forth any variations from the ordinary standards for preliminary and final approval] Authorizing the planning board to grant general development plan approval to provide the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development [at the stage of preliminary approval] and setting forth any variations from the ordinary standards for preliminary and final approval;

(2) Requiring that any common open space resulting from the application of standards for density, or intensity of land use, be set aside for the use and benefit of the owners or residents in such development subject to section 31 of this act;

(3) Setting forth how the amount and location of any common open space shall be determined and how its improvement and maintenance for common open space use shall be secured subject to section 31 of this act;

(4) Authorizing the planning board to allow for a greater concentration of density, or intensity of land use, within a section or sections of development, whether it be earlier, later or simultaneous in the development, than in others;

(5) Setting forth any requirement that the approval by the planning board of a greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by grant of easement or by covenant in favor of the municipality; provided that such reservation shall, as far as practicable, defer the precise location of common open space until an application for final approval is filed, so that flexibility of development can be maintained;

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

4

(6) Setting forth any requirements for timing of development among the various types of uses and subgroups thereunder and, in the case of planned unit development and planned unit residential development, whether some nonresidential uses are required to be built before, after or at the time as the residential uses.

d. Provisions ensuring in the case of a development which proposes construction over a period of years, the protection of the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development.

e. Provisions that require as a condition for local municipal approval the submission of proof that no taxes or assessments for local improvements are due or delinquent on the property for which any subdivision, site plan, or planned development application is made.

f. Provisions for the creation of a Site Plan Review Advisory Board for the purpose of reviewing all site plan applications and making recommendations to the planning board in regard thereto."

Page 5, Section 3, Lines 1-6:

On line 1 delete "Any municipality may enter into a municipal"; delete lines 2-5 in their entirety; on line 6 delete "pality and the developer which sets" insert "The general development plan shall set"

Page 5, Section 3, Line 7:

Delete "and"

Page 5, Section 3, Line 8:

Delete "and nonresidential"; delete "to comprise" insert ", and the nonresidential floor area ratio for"

Page 5, Section 3, Lines 10-17:

On line 10 delete "The"; delete lines 11-17 in their entirety; insert "The planned development shall be developed in accordance with the general development plan approved by the planning board notwithstanding any provision of P.L. 1975, c.291 (C. 40:55D-1 et seq.), or an ordinance or regulation adopted pursuant thereto after the effective date of the approval."

Page 5, Section 3, Line 18:

Delete "agreement" insert "effect of the general development plan approval"

Page 5, Section 3, Line 20:

Delete "agreement" insert "effect of the approval"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

5

- Pages 5-6, Section 3, Lines 23-44: Delete "The planning board"; delete lines 24-44 in their entirety
- Page 6, Section 3, line 46: Delete "agreement" insert "effect of approval of the development plan"
- Page 6, Section 3, Line 51: Delete "agreement" insert "general development plan and any conditions which the planning board attaches to the approval thereof"
- Page 6, Section 4, Lines 3-4: Delete "of not less than one inch = 1,000 feet" insert "specified by ordinance"
- Page 6, Section 4, Line 11: After "density" insert "and intensity of use"
- Page 6, Section 4, Lines 12-13: Delete "and a nonresidential"; delete "factor" insert "and a nonresidential floor area ratio"
- Page 7, Section 4, Line 56: Delete "and"
- Page 7, Section 4, Line 62: Delete "." insert "; and"
- Page 7, Section 4, After Line 62: Insert "1. A municipal development agreement, which shall mean a written agreement between a municipality and a developer relating to the planned development."
- Page 7, Section 5, Line 1: After "(New section)" insert "a."
- Pages 7-8, Section 5, Lines 9-43: Delete in their entirety and insert a new subsection: "b. The planning board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute general development plan approval of the planned development."
- Page 8, Section 6, Lines 3-4: Delete "and the governing body pursuant to subsection b. of section 3 of this act"
- Page 8, Section 7, Line 3: Delete "and governing body"; delete "the effective date of the agreement" insert "approval of the general development plan"
- Page 9, Section 7, Line 6: Delete "or nonresidential"; after "development" insert "or the floor area ratio of nonresidential development"
- Page 9, Section 7, Line 9: After "density" insert "or floor area ratio"
- Page 9, Section 7, Lines 15-16: Delete "not require governing body approval pursuant to this act" insert "be approved by the planning board"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

6

<u>Page 9, Section 7, Lines 21-27:</u>	Delete in their entirety
<u>Page 9, Section 8, Line 1:</u>	Delete "in"
<u>Page 9, Section 8, Line 2:</u>	Delete "municipal development agreement has been entered into" insert "general development plan has been approved by the planning board"
<u>Page 9, Section 8, Lines 3-4:</u>	Delete "the mutual agreement of the municipality and" insert "application by"; after "developer" insert "approved by the planning board"
<u>Page 9, Section 8, Line 5:</u>	Delete "agreement" insert "approval"
<u>Page 9, Section 8, Line 9:</u>	Delete "or nonresidential"; after "density" insert "or nonresidential floor area ratio"
<u>Page 9, Section 9, Line 2:</u>	Delete "agreement" insert "approved general development plan"
<u>Page 9, Section 9, Line 3:</u>	Delete "municipal clerk" insert "administrative officer"
<u>Page 9, Section 9, Line 4:</u>	Delete "agreement" insert "approved plan"
<u>Page 9, Section 9, Line 8:</u>	Delete "agreement" insert "approved general development plan"
<u>Page 10, Section 9, Line 13:</u>	Delete "agreement" insert "approved plan"
<u>Page 10, Section 9, Line 15:</u>	Delete "agreement" insert "approved plan"
<u>Page 10, Section 9, Lines 17-18:</u>	Delete "agreement" insert "approved plan"
<u>Page 10, Section 9, Line 20:</u>	Delete "agreement" insert "approved plan"
<u>Page 10, Section 9, Line 22:</u>	Delete "agreement" insert "approved plan"
<u>Page 10, Section 9, Line 24:</u>	Delete "agreement" insert "approval"
<u>Page 10, Section 9, Line 25:</u>	Delete "agreement" insert "approval"
<u>Page 10, Section 9, Lines 27-28:</u>	Delete "entered into an agreement" insert "general development plan approval"
<u>Page 10, Section 9, Line 29:</u>	Delete "agreement" insert "general development plan approval"
<u>Page 10, Section 9, Line 31:</u>	Delete "determined as complete" insert "approved"
<u>Page 10, Section 9, Line 32:</u>	Delete "agreement" insert "approval"
<u>Page 10, Section 10, Line 2:</u>	Delete "agreement" insert "approved general development plan"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

7

Page 10, Section 10 Line 3:

After "of the" delete "agreement"  
insert "approval"; after ", the" delete  
"agreement" insert "approval"

Page 10, Section 10, Line 8:

Delete "agreement" insert "approved  
general development plan"

Page 10, Section 10, Line 10:

Delete "agreement" insert "approval"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel



# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN  
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: FRI., MAY 29, 1987

Governor Thomas H. Kean today signed legislation permitting municipalities to enter into development agreements with large scale developers.

Governor Kean had conditionally vetoed the legislation on April 27 in order to make such agreements consistent with the Municipal Land Use Law.

Governor Kean stated, "My recommendations strengthen this bill by permitting vested rights for certain large-scale developers consistent with the scheme that now exists in the Municipal Land Use Law."

This legislation will allow for predicability in the development process so that a developer could rely upon the planning and zoning ordinances in effect at the time of the agreement for the duration of the building project.

The legislation is effective immediately, but will not apply to any developer who has received final approval of a site plan or subdivision of any section of a planned development before the effective date of this act.

S-2966/A-3685, was sponsored by Senator Richard Van Wagner, D-Monmouth and Assemblyman Garabed "Chuck" Haytaian, R-Warren.

# # # #