



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER:95

NJSA:40:55D-5

"Municipal land use law -- amendments"

BILL NO: S170

SPONSOR(S):Bennett

DATE INTRODUCED: Pre-filed

COMMITTEE:

ASSEMBLY: Local Government and Housing

SENATE: Community and Urban Affairs

AMENDED DURING PASSAGE:No

DATE OF PASSAGE:

ASSEMBLY: June 29, 1998

SENATE: February 26, 1998

DATE OF APPROVAL: September 2, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Original

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SPONSORS STATEMENT: *Yes* (Begins on page 13 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*Yes*

SENATE:*Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING:*No*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

SENATE, No. 170

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Clarifies various provisions of the Municipal Land Use Law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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2

1 AN ACT clarifying various provisions of the "Municipal Land Use
2 Law," and amending P.L.1975, c.291 and P.L.1979, c.216.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to read
8 as follows:

9 3.2. "Maintenance guarantee" means any security which may be
10 accepted by a municipality for the maintenance of any improvements
11 required by this act, including but not limited to surety bonds, letters
12 of credit under the circumstances specified in section 16 of P.L.1991,
13 c.256 (C.40:55D-53.5), and cash.

14 "Major subdivision" means any subdivision not classified as a minor
15 subdivision.

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

19 "Mayor" means the chief executive of the municipality, whatever his
20 official designation may be, except that in the case of municipalities
21 governed by municipal council and municipal manager the term
22 "mayor" shall not mean the "municipal manager" but shall mean the
23 mayor of such municipality.

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

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

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

40 "Municipal agency" means a municipal planning board or board of
41 adjustment, or a governing body of a municipality when acting
42 pursuant to this act and any agency which is created by or responsible
43 to one or more municipalities when such agency is acting pursuant to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 this act.

2 "Municipal resident" means a person who is domiciled in the
3 municipality.

4 "Nonconforming lot" means a lot, the area, dimension or location
5 of which was lawful prior to the adoption, revision or amendment of
6 a zoning ordinance, but fails to conform to the requirements of the
7 zoning district in which it is located by reason of such adoption,
8 revision or amendment.

9 "Nonconforming structure" means a structure the size, dimension
10 or location of which was lawful prior to the adoption, revision or
11 amendment of a zoning ordinance, but which fails to conform to the
12 requirements of the zoning district in which it is located by reasons of
13 such adoption, revision or amendment.

14 "Nonconforming use" means a use or activity which was lawful
15 prior to the adoption, revision or amendment of a zoning ordinance,
16 but which fails to conform to the requirements of the zoning district
17 in which it is located by reasons of such adoption, revision or
18 amendment.

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

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

24 "Offsite" means located outside the lot lines of the lot in question
25 but within the property~~[() , of which the lot is a part()]~~, which is the
26 subject of a development application or ~~[contiguous portion of a]~~ the
27 closest half of the street or right-of-way abutting the property of which
28 the lot is a part.

29 "Off-tract" means not located on the property which is the subject
30 of a development application nor on ~~[a contiguous portion of a]~~ the
31 closest half of the abutting street or right-of-way.

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

34 "On-tract" means located on the property which is the subject of a
35 development application or on ~~[a contiguous portion of a]~~ the closest
36 half of an abutting street or right-of-way.

37 "Open-space" means any parcel or area of land or water essentially
38 unimproved and set aside, dedicated, designated or reserved for public
39 or private use or enjoyment or for the use and enjoyment of owners
40 and occupants of land adjoining or neighboring such open space;
41 provided that such areas may be improved with only those buildings,
42 structures, streets and offstreet parking and other improvements that
43 are designed to be incidental to the natural openness of the land.

44 (cf: P.L.1991, c.256, s.1)

45

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

1 as follows:

2 6. Hearings. a. The municipal agency shall hold a hearing on each
3 application for development, or adoption, revision or amendment of
4 the master plan.

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

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

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

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

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

37 The municipal agency, in furnishing a transcript or tape of the
38 proceedings to an interested party at his expense, shall not charge such
39 interested party more than the **【maximum permitted in**
40 **N.J.S.2A:11-15】** actual cost of preparing the transcript or tape. **【Said**
41 **transcript】** Transcripts shall be certified in writing by the transcriber
42 to be accurate.

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

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

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

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

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

1 decision, whether arranged by the municipality or the applicant.
2 (cf: P.L.1984, c.20, s.4)

3
4 3. Section 9 of P.L.1979, c.216 (C.40:55D-10.2) is amended to
5 read as follows:

6 9. A member of a municipal agency who was absent for one or
7 more of the meetings at which a hearing was held or was not a member
8 of the municipal agency at that time, shall be eligible to vote on the
9 matter upon which the hearing was conducted, notwithstanding his
10 absence from one or more of the meetings; provided, however, that
11 such board member has available to him the transcript or recording of
12 all of the hearing from which he was absent or was not a member, and
13 certifies in writing to the board that he has read such transcript or
14 listened to such recording.
15 (cf. P.L.1979, c.216, s.9)

16
17 4. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to
18 read as follows:

19 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of this
20 section shall be given by the applicant unless a particular municipal
21 officer is so designated by ordinance; provided that nothing contained
22 herein shall prevent the applicant from giving such notice if he so
23 desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of
24 this section shall be given at least 10 days prior to the date of the
25 hearing.

26 a. Public notice of a hearing **【on an application】** shall be given for
27 an extension of approvals for five or more years under subsection d.
28 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of
29 section 40 of P.L.1975, c.291 (C.40:55D-52); for modification or
30 elimination of a significant condition or conditions in a memorializing
31 resolution in any situation wherein the application for development for
32 which the memorializing resolution is proposed for adoption required
33 public notice, and for any other applications for development 【shall be
34 given, except for】. with the following exceptions: (1) conventional
35 site plan review pursuant to section 34 of P.L.1975, c.291
36 (C.40:55D-46), (2) minor subdivisions pursuant to section 35 of
37 P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to
38 section 38 of P.L.1975, c.291 (C.40:55D-50); 【provided that】
39 notwithstanding the foregoing, the governing body may by ordinance
40 require public notice for such categories of site plan review as may be
41 specified by ordinance【; and provided further that public】. for appeals
42 of determinations of administrative officers pursuant to subsection a.
43 of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for
44 interpretation pursuant to subsection b. of section 57 of P.L.1975,
45 c.291 (C.40:55D-70). Public notice shall also be given in the event
46 that relief is requested pursuant to section 47 or 63 of P.L.1975, c.291

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1 (C.40:55D-60 or C.40:55D-76) as part of an application for
2 development otherwise excepted herein from public notice. Public
3 notice shall be given by publication in the official newspaper of the
4 municipality, if there be one, or in a newspaper of general circulation
5 in the municipality.

6 b. Notice of a hearing requiring public notice pursuant to
7 subsection a. of this section shall be given to the owners of all real
8 property as shown on the current tax duplicates, located in the State
9 and within 200 feet in all directions of the property which is the
10 subject of such hearing; provided that this requirement shall be deemed
11 satisfied by notice to the (1) condominium association, in the case of
12 any unit owner whose unit has a unit above or below it, or (2)
13 horizontal property regime, in the case of any co-owner whose
14 apartment has an apartment above or below it. Notice shall be given
15 by: (1) serving a copy thereof on the property owner as shown on the
16 said current tax duplicate, or his agent in charge of the property, or (2)
17 mailing a copy thereof by certified mail to the property owner at his
18 address as shown on the said current tax duplicate.

19 Notice to a partnership owner may be made by service upon any
20 partner. Notice to a corporate owner may be made by service upon its
21 president, a vice president, secretary or other person authorized by
22 appointment or by law to accept service on behalf of the corporation.
23 Notice to a condominium association, horizontal property regime,
24 community trust or homeowners' association, because of its ownership
25 of common elements or areas located within 200 feet of the property
26 which is the subject of the hearing, may be made in the same manner
27 as to a corporation without further notice to unit owners, co-owners,
28 or homeowners on account of such common elements or areas.

29 c. Upon the written request of an applicant, the administrative
30 officer of a municipality shall, within seven days, make and certify a
31 list from said current tax duplicates of names and addresses of owners
32 to whom the applicant is required to give notice pursuant to subsection
33 b. of this section. In addition, the administrative officer shall include
34 on the list the names, addresses and positions of those persons who,
35 not less than seven days prior to the date on which the applicant
36 requested the list, have registered to receive notice pursuant to
37 subsection h. of this section. The applicant shall be entitled to rely
38 upon the information contained in such list, and failure to give notice
39 to any owner or to any public utility, cable television company, or
40 local utility not on the list shall not invalidate any hearing or
41 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,
42 whichever is greater, may be charged for such list.

43 d. Notice of hearings on applications for development involving
44 property located within 200 feet of an adjoining municipality shall be
45 given by personal service or certified mail to the clerk of such
46 municipality.

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1 e. Notice shall be given by personal service or certified mail to the
2 county planning board of a hearing on an application for development
3 of property adjacent to an existing county road or proposed road
4 shown on the official county map or on the county master plan,
5 adjoining other county land or situated within 200 feet of a municipal
6 boundary.

7 f. Notice shall be given by personal service or certified mail to the
8 Commissioner of Transportation of a hearing on an application for
9 development of property adjacent to a State highway.

10 g. Notice shall be given by personal service or certified mail to the
11 State Planning Commission of a hearing on an application for
12 development of property which exceeds 150 acres or 500 dwelling
13 units. The notice shall include a copy of any maps or documents
14 required to be on file with the municipal clerk pursuant to subsection
15 b. of section 6 of P.L.1975, c.291 (C.40:55D-10).

16 h. Notice of hearings on applications for approval of a major
17 subdivision or a site plan not defined as a minor site plan under this act
18 requiring public notice pursuant to subsection a. of this section shall
19 be given, in the case of a public utility, cable television company or
20 local utility which possesses a right-of-way or easement within the
21 municipality and which has registered with the municipality in
22 accordance with section 5 of P.L.1991, c.412 (C.40:55D-12.1), by (1)
23 serving a copy of the notice on the person whose name appears on the
24 registration form on behalf of the public utility, cable television
25 company or local utility or (2) mailing a copy thereof by certified mail
26 to the person whose name appears on the registration form at the
27 address shown on that form.

28 i. The applicant shall file an affidavit of proof of service with the
29 municipal agency holding the hearing on the application for
30 development in the event that the applicant is required to give notice
31 pursuant to this section.

32 j. Notice pursuant to subsections d., e., f., g. and h. of this section
33 shall not be deemed to be required, unless public notice pursuant to
34 subsection a. and notice pursuant to subsection b. of this section are
35 required.

36 (cf: P.L.1991, c.412, s.4)

37

38 5. Section 14 of P.L.1975, c.291 (C.40:55D-23) is amended to
39 read as follows:

40 14. Planning board membership. a. The governing body may, by
41 ordinance, create a planning board of seven or nine members. All
42 members of the planning board, except for the Class II members set
43 forth below, shall be municipal residents. The membership shall
44 consist of, for convenience in designating the manner of appointment,
45 the four following classes:

46 Class I--the mayor or the mayor's designee in the absence of the

1 mayor or, in the case of the council-manager form of government
2 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210
3 (C.40:69A-1 et seq.) or "the municipal manager form of government
4 law" (R.S.40:79-1 et seq.), the manager, if so provided by the
5 aforesaid ordinance.

6 Class II--one of the officials of the municipality other than a
7 member of the governing body, to be appointed by the mayor;
8 provided that if there be an environmental commission, the member of
9 the environmental commission who is also a member of the planning
10 board as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall
11 be deemed to be the Class II planning board member for purposes of
12 this act in the event that there be among the Class IV or alternate
13 members of the planning board both a member of the zoning board of
14 adjustment and a member of the board of education.

15 Class III--a member of the governing body to be appointed by it.

16 Class IV--other citizens of the municipality, to be appointed by the
17 mayor or, in the case of the council-manager form of government
18 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210
19 (C.40:69A-1 et seq.) or "the municipal manager form of government
20 law" (R.S.40:79-1 et seq.), by the council, if so provided by the
21 aforesaid ordinance.

22 The members of Class IV shall hold no other municipal office,
23 position or employment, except that in the case of nine-member
24 boards, one such member may be a member of the zoning board of
25 adjustment or historic preservation commission. No member of the
26 board of education may be a Class IV member of the planning board,
27 except that in the case of a nine-member board, one Class IV member
28 may be a member of the board of education. If there be a municipal
29 environmental commission, the member of the environmental
30 commission who is also a member of the planning board, as required
31 by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV
32 planning board member, unless there be among the Class IV or
33 alternate members of the planning board both a member of the zoning
34 board of adjustment or historic preservation commission and a member
35 of the board of education, in which case the member common to the
36 planning board and municipal environmental commission shall be
37 deemed a Class II member of the planning board. For the purpose of
38 this section, membership on a municipal board or commission whose
39 function is advisory in nature, and the establishment of which is
40 discretionary and not required by statute, shall not be considered the
41 holding of municipal office.

42 b. The term of the member composing Class I shall correspond to
43 the mayor's or manager's official tenure or if the member is the mayor's
44 designee in the absence of the mayor, the designee shall serve at the
45 pleasure of the mayor during the mayor's official tenure. The terms of
46 the members composing Class II and Class III shall be for one year or

1 terminate at the completion of their respective terms of office,
2 whichever occurs first, except for a Class II member who is also a
3 member of the environmental commission. The term of a Class II or
4 Class IV member who is also a member of the environmental
5 commission shall be for three years or terminate at the completion of
6 his term of office as a member of the environmental commission,
7 whichever occurs first. The term of a Class IV member who is also a
8 member of the board of adjustment or board of education shall
9 terminate whenever he is no longer a member of such other body or at
10 the completion of his Class IV term, whichever occurs first. The terms
11 of all Class IV members first appointed under this act shall be so
12 determined that to the greatest practicable extent the expiration of
13 such terms shall be distributed evenly over the first four years after
14 their appointments; provided that the initial Class IV term of no
15 member shall exceed four years. Thereafter, the Class IV term of each
16 such member shall be four years. If a vacancy in any class shall occur
17 otherwise than by expiration of the planning board term, it shall be
18 filled by appointment, as above provided, for the unexpired term. No
19 member of the planning board shall be permitted to act on any matter
20 in which he has, either directly or indirectly, any personal or financial
21 interest. Any member other than a Class I member, after a public
22 hearing if he requests one, may be removed by the governing body for
23 cause.

24 c. In any municipality in which the term of the municipal governing
25 body commences on January 1, the governing body may, by ordinance,
26 provide that the term of appointment of any class of member of the
27 planning board appointed pursuant to this section shall commence on
28 January 1. In any municipality in which the term of the municipal
29 governing body commences on July 1, the governing body may, by
30 ordinance, provide that the term of appointment of any class of
31 member appointed pursuant to this section commence on July 1.

32 (cf: P.L.1994, c.158, s.1)

33

34 6. Section 13 of P.L.1979, c.216 (C.40:55D-23.1) is amended to
35 read as follows:

36 13. The governing body may, by ordinance, provide for the
37 appointment to the planning board of not more than two alternate
38 members, who shall be municipal residents. Alternate members shall
39 be appointed by the appointing authority for Class IV members, and
40 shall meet the qualifications of Class IV members of nine-member
41 planning boards. Alternate members shall be designated at the time of
42 appointment by the mayor as "Alternate No. 1" and "Alternate No. 2."
43 The terms of the alternate members shall be for 2 years, except that the
44 terms of the alternate members shall be such that the term of not more
45 than one alternate member shall expire in any 1 year; provided,
46 however, that in no instance shall the terms of the alternate members

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1 first appointed exceed 2 years. A vacancy occurring otherwise than by
2 expiration of term shall be filled by the appointing authority for the
3 unexpired term only.

4 No alternate member shall be permitted to act on any matter in
5 which he has either directly or indirectly any personal or financial
6 interest. An alternate member may, after public hearing if he requests
7 one, be removed by the governing body for cause.

8 Alternate members may participate in [discussions of the
9 proceedings] all matters but may not vote except in the absence or
10 disqualification of a regular member of any class. Participation of
11 alternate members shall not be deemed to increase the size of the
12 planning board established by ordinance of the governing body
13 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23). A vote
14 shall not be delayed in order that a regular member may vote instead
15 of an alternate member. In the event that a choice must be made as to
16 which alternate member is to vote, Alternate No. 1 shall vote.

17 (cf: P.L.1979, c.216, s.13)

18

19 7. Section 15 of P.L.1975, c.291 (C.40:55D-24) is amended to
20 read as follows:

21 15. Organization of planning board. The planning board shall elect
22 a chairman and vice chairman from the members of Class IV, select a
23 secretary who may or may not be a member or alternate member of the
24 planning board or a municipal employee, and create and fill such other
25 offices as established by ordinance. An alternate member shall not
26 serve as chairman or vice-chairman of the planning board. It may
27 employ, or contract for, and fix the compensation of legal counsel,
28 other than the municipal attorney, and experts, and other staff and
29 services as it may deem necessary, not exceeding, exclusive of gifts or
30 grants, the amount appropriated by the governing body for its use.
31 The governing body shall make provision in its budget and appropriate
32 funds for the expenses of the planning board.

33 (cf: P.L.1975, c.291, s.15)

34

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

37 30. Contribution for off-tract water, sewer, drainage, and street
38 improvements. The governing body may by ordinance adopt
39 regulations requiring a developer, as a condition for approval of a
40 subdivision or site plan, to pay [his] the pro-rata share of the cost of
41 providing only reasonable and necessary street improvements and
42 water, sewerage and drainage facilities, and easements therefor,
43 located [outside the property limits of the subdivision or
44 development] off-tract but necessitated or required by construction or
45 improvements within such subdivision or development. Such
46 regulations shall be based on circulation and comprehensive utility

1 service plans pursuant to subsections 19b.(4) and 19b.(5) of this act,
2 respectively, and shall establish fair and reasonable standards to
3 determine the proportionate or pro-rata amount of the cost of such
4 facilities that shall be borne by each developer or owner within a
5 related and common area, which standards shall not be altered
6 subsequent to preliminary approval. Where a developer pays the
7 amount determined as his pro-rata share under protest he shall institute
8 legal action within 1 year of such payment in order to preserve the
9 right to a judicial determination as to the fairness and reasonableness
10 of such amount.

11 (cf: P.L.1975, c.291, s.30)

12

13 9. Section 56 of P.L.1975, c.291 (C.40:55D-69) is amended to
14 read as follows:

15 56. Zoning board of adjustments. Upon the adoption of a zoning
16 ordinance, the governing body shall create, by ordinance, a zoning
17 board of adjustment unless the municipality is eligible for, and
18 exercises, the option provided by subsection c. of section 16 of
19 P.L.1975, c.291 (C.40:55D-25). A zoning board of adjustment shall
20 consist of seven regular members and may have not more than two
21 alternate members. All regular members and any alternate members
22 shall be municipal residents. Notwithstanding the provisions of any
23 other law or charter heretofore adopted, such ordinance shall provide
24 the method of appointment of all such members. Alternate members
25 shall be designated at the time of appointment by the authority
26 appointing them as "Alternate No. 1" and "Alternate No. 2." The
27 terms of the members first appointed under this act shall be so
28 determined that to the greatest practicable extent, the expiration of
29 such terms shall be distributed, in the case of regular members, evenly
30 over the first four years after their appointment, and in the case of
31 alternate members, evenly over the first two years after their
32 appointment; provided that the initial term of no regular members shall
33 exceed four years and that the initial term of no alternate member shall
34 exceed two years. Thereafter, the term of each regular member shall
35 be four years, and the term of each alternate member shall be two
36 years. No member may hold any elective office or position under the
37 municipality. No member of the board of adjustment shall be
38 permitted to act on any matter in which he has, either directly or
39 indirectly, any personal or financial interest. A member may, after
40 public hearing if he requests it, be removed by the governing body for
41 cause. A vacancy occurring otherwise than by expiration of term shall
42 be filled for the unexpired term only.

43 The board of adjustment shall elect a chairman and vice-chairman
44 from its regular members and select a secretary, who may or may not
45 be a member of the board of adjustment or a municipal employee.

46 Alternate members may participate in [discussions of the

1 proceedings] all matters but may not vote except in the absence or
2 disqualification of a regular member. Participation of alternate
3 members shall not be deemed to increase the size of the zoning board
4 of adjustment established by ordinance of the governing body pursuant
5 to section 56 of P.L.1975, c.291 (C.40:55D-69). A vote shall not be
6 delayed in order that a regular member may vote instead of an
7 alternate member. In the event that a choice must be made as to which
8 alternate member is to vote, Alternate No. 1 shall vote.
9 (cf: P.L.1985, c.516, s.27)

10

11 10. This act shall take effect 60 days following enactment.

12

13

14

STATEMENT

15

16 This bill would amend the "Municipal Land Use Law," P.L.1975,
17 c.291 (C.40:55D-1 et seq.) as follows:

18 Sections 1 and 8 would amend section 3.2 of P.L.1975, c.291
19 (C.40:55D-5) and section 30 of P.L.1975, c.291 (C.40:55D-42) to
20 resolve an inconsistency concerning land improvements associated
21 with subdivision and site plan approvals. In Cameron & Cameron Inc.
22 v. Planning Board of the Township of Warren, 250 N.J. Super. 296
23 (App. Div. 1991), the court observed that the headnote of section 30
24 of P.L.1975, c.291 (C.40:55D-42) referenced "off-tract"
25 improvements as being subject to a pro-rata formula, whereas the body
26 of that section referenced improvements located "outside the property
27 limits" - a slightly broader category. Additional confusion resulted
28 from the imprecision of the phrase "contiguous portion of a street or
29 right-of-way" which is found in the definitions of off-site, off-tract and
30 on-tract. To remedy this situation, the bill inserts the term "off-tract"
31 within the body of section 30 of P.L.1975, c.291 (C.40:55D-42),
32 thereby making it consistent with the definitional section.
33 Additionally, the definitions of off-site, off-tract, on-site and on-tract
34 are altered generally by replacing the reference to a "contiguous
35 portion" of a street by the more precise "closest half of the abutting
36 street".

37 Section 1 would also define the term "municipal resident" as a
38 person who is domiciled in the municipality.

39 Section 2 would amend subsection g. of section 6 of P.L.1975,
40 c.291 (C.40:55D-10) to clarify that if only one member who voted for
41 an action taken by a municipal planning or zoning board attends a
42 subsequent meeting at which a memorializing resolution is presented,
43 the vote of that single member shall be sufficient to adopt the
44 resolution. The provision is not intended to change quorum
45 requirements for the subsequent meeting, but only to clarify the
46 number of votes required to adopt a memorializing resolution. This

1 change responds to Patel v. Planning Board, 258 N.J. Super. 437 (Law
2 Div. 1992) in which the judge ruled that the vote of one such member
3 was not sufficient.

4 Section 2 would also amend section 6 of P.L.1975, c.291
5 (C.40:55D-10) to provide that a municipality furnishing a transcript or
6 tape of the proceedings to an interested party may not charge the
7 interested party more than the actual cost of preparation of the
8 transcript or tape. This change was necessitated by the fact that court
9 reporters doing work outside of court charge at a higher rate than the
10 rate prescribed by N.J.S.2A:11-15.

11 Section 3 would expand section 9 of P.L.1979, c.216
12 (C.40:55D-10.2) to provide, with reference to continuing applications,
13 that members who may not have been members at the time of a
14 particular hearing may vote if the matter is pending and the new
15 member reads the transcript or listens to a recording of the prior
16 hearing.

17 Section 4 would clarify the notice provisions of section 7.1 of
18 P.L.1975, c.291 (C.40:55D-12) as to appeals of determinations of
19 administrative officers pursuant to paragraph (a) of section 57 of
20 P.L.1975, c.291 (C.40:55D-70), and requests for interpretation
21 pursuant to paragraph (b) of that section. In both cases, an option is
22 given to the municipality to require statutory notice by enacting a
23 procedural ordinance. In addition, section 4 would clarify that notice
24 pursuant to the section being amended would be required for
25 extensions of more than five years granted pursuant to subsection d.
26 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of
27 section 40 of P.L.1975, c.291 (C.40:55D-52), and for the modification
28 or elimination of significant conditions in a resolution in those
29 instances where the original application required the provision of
30 public notice.

31 Section 5 would clarify that all members of planning boards, except
32 for Class II members, must be municipal residents.

33 Section 6 would: clarify the right of alternate members of a
34 planning board to participate in all matters; require alternate members
35 to be municipal residents; and provide that the participation of
36 alternates in all matters does not change current quorum requirements.

37 Section 7 would amend section 15 of P.L.1975, c.291
38 (C.40:55D-24) to make uniform the provisions governing planning
39 boards and boards of adjustment with regard to governmental
40 appropriations. The language proposed to be added to this section
41 corresponds with the language found in section 58 of P.L.1975, c.291
42 (C.40:55D-71). In addition, this section would preclude an alternate
43 member from serving as the chairman or vice-chairman of the planning
44 board.

45 Section 9 would amend section 56 of P.L.1975, c.291
46 (C.40:55D-69) to: clarify the right of alternate members of a board of

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15

1 adjustment to participate in all matters; require all zoning board
2 members and alternates to be municipal residents; specify that the
3 chairman and vice-chairman must be elected from the regular
4 members; and provide that the participation of alternates in all matters
5 does not effect current quorum requirements.

SENATE, No. 170

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Clarifies various provisions of the Municipal Land Use Law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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2

1 AN ACT clarifying various provisions of the "Municipal Land Use
2 Law," and amending P.L.1975, c.291 and P.L.1979, c.216.

3

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

6

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

9 3.2. "Maintenance guarantee" means any security which may be
10 accepted by a municipality for the maintenance of any improvements
11 required by this act, including but not limited to surety bonds, letters
12 of credit under the circumstances specified in section 16 of P.L.1991,
13 c.256 (C.40:55D-53.5), and cash.

14 "Major subdivision" means any subdivision not classified as a minor
15 subdivision.

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

19 "Mayor" means the chief executive of the municipality, whatever his
20 official designation may be, except that in the case of municipalities
21 governed by municipal council and municipal manager the term
22 "mayor" shall not mean the "municipal manager" but shall mean the
23 mayor of such municipality.

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

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

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

40 "Municipal agency" means a municipal planning board or board of
41 adjustment, or a governing body of a municipality when acting
42 pursuant to this act and any agency which is created by or responsible
43 to one or more municipalities when such agency is acting pursuant to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 this act.

2 "Municipal resident" means a person who is domiciled in the
3 municipality.

4 "Nonconforming lot" means a lot, the area, dimension or location
5 of which was lawful prior to the adoption, revision or amendment of
6 a zoning ordinance, but fails to conform to the requirements of the
7 zoning district in which it is located by reason of such adoption,
8 revision or amendment.

9 "Nonconforming structure" means a structure the size, dimension
10 or location of which was lawful prior to the adoption, revision or
11 amendment of a zoning ordinance, but which fails to conform to the
12 requirements of the zoning district in which it is located by reasons of
13 such adoption, revision or amendment.

14 "Nonconforming use" means a use or activity which was lawful
15 prior to the adoption, revision or amendment of a zoning ordinance,
16 but which fails to conform to the requirements of the zoning district
17 in which it is located by reasons of such adoption, revision or
18 amendment.

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

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

24 "Offsite" means located outside the lot lines of the lot in question
25 but within the property~~[() , of which the lot is a part()]~~, which is the
26 subject of a development application or ~~[contiguous portion of a]~~ the
27 closest half of the street or right-of-way abutting the property of which
28 the lot is a part.

29 "Off-tract" means not located on the property which is the subject
30 of a development application nor on ~~[a contiguous portion of a]~~ the
31 closest half of the abutting street or right-of-way.

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

34 "On-tract" means located on the property which is the subject of a
35 development application or on ~~[a contiguous portion of a]~~ the closest
36 half of an abutting street or right-of-way.

37 "Open-space" means any parcel or area of land or water essentially
38 unimproved and set aside, dedicated, designated or reserved for public
39 or private use or enjoyment or for the use and enjoyment of owners
40 and occupants of land adjoining or neighboring such open space;
41 provided that such areas may be improved with only those buildings,
42 structures, streets and offstreet parking and other improvements that
43 are designed to be incidental to the natural openness of the land.

44 (cf: P.L.1991, c.256, s.1)

45

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

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1 as follows:

2 6. Hearings. a. The municipal agency shall hold a hearing on each
3 application for development, or adoption, revision or amendment of
4 the master plan.

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

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

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

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

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

37 The municipal agency, in furnishing a transcript or tape of the
38 proceedings to an interested party at his expense, shall not charge such
39 interested party more than the **【maximum permitted in**
40 **N.J.S.2A:11-15】** actual cost of preparing the transcript or tape. **【Said**
41 **transcript】** Transcripts shall be certified in writing by the transcriber
42 to be accurate.

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

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

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

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

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

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6

1 decision, whether arranged by the municipality or the applicant.
2 (cf: P.L.1984, c.20, s.4)

3
4 3. Section 9 of P.L.1979, c.216 (C.40:55D-10.2) is amended to
5 read as follows:

6 9. A member of a municipal agency who was absent for one or
7 more of the meetings at which a hearing was held or was not a member
8 of the municipal agency at that time, shall be eligible to vote on the
9 matter upon which the hearing was conducted, notwithstanding his
10 absence from one or more of the meetings; provided, however, that
11 such board member has available to him the transcript or recording of
12 all of the hearing from which he was absent or was not a member, and
13 certifies in writing to the board that he has read such transcript or
14 listened to such recording.
15 (cf. P.L.1979, c.216, s.9)

16
17 4. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to
18 read as follows:

19 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of this
20 section shall be given by the applicant unless a particular municipal
21 officer is so designated by ordinance; provided that nothing contained
22 herein shall prevent the applicant from giving such notice if he so
23 desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of
24 this section shall be given at least 10 days prior to the date of the
25 hearing.

26 a. Public notice of a hearing **【on an application】** shall be given for
27 an extension of approvals for five or more years under subsection d.
28 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of
29 section 40 of P.L.1975, c.291 (C.40:55D-52); for modification or
30 elimination of a significant condition or conditions in a memorializing
31 resolution in any situation wherein the application for development for
32 which the memorializing resolution is proposed for adoption required
33 public notice, and for any other applications for development 【shall be
34 given, except for】. with the following exceptions: (1) conventional
35 site plan review pursuant to section 34 of P.L.1975, c.291
36 (C.40:55D-46), (2) minor subdivisions pursuant to section 35 of
37 P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to
38 section 38 of P.L.1975, c.291 (C.40:55D-50); 【provided that】
39 notwithstanding the foregoing, the governing body may by ordinance
40 require public notice for such categories of site plan review as may be
41 specified by ordinance【; and provided further that public】. for appeals
42 of determinations of administrative officers pursuant to subsection a.
43 of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for
44 interpretation pursuant to subsection b. of section 57 of P.L.1975,
45 c.291 (C.40:55D-70). Public notice shall also be given in the event
46 that relief is requested pursuant to section 47 or 63 of P.L.1975, c.291

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1 (C.40:55D-60 or C.40:55D-76) as part of an application for
2 development otherwise excepted herein from public notice. Public
3 notice shall be given by publication in the official newspaper of the
4 municipality, if there be one, or in a newspaper of general circulation
5 in the municipality.

6 b. Notice of a hearing requiring public notice pursuant to
7 subsection a. of this section shall be given to the owners of all real
8 property as shown on the current tax duplicates, located in the State
9 and within 200 feet in all directions of the property which is the
10 subject of such hearing; provided that this requirement shall be deemed
11 satisfied by notice to the (1) condominium association, in the case of
12 any unit owner whose unit has a unit above or below it, or (2)
13 horizontal property regime, in the case of any co-owner whose
14 apartment has an apartment above or below it. Notice shall be given
15 by: (1) serving a copy thereof on the property owner as shown on the
16 said current tax duplicate, or his agent in charge of the property, or (2)
17 mailing a copy thereof by certified mail to the property owner at his
18 address as shown on the said current tax duplicate.

19 Notice to a partnership owner may be made by service upon any
20 partner. Notice to a corporate owner may be made by service upon its
21 president, a vice president, secretary or other person authorized by
22 appointment or by law to accept service on behalf of the corporation.
23 Notice to a condominium association, horizontal property regime,
24 community trust or homeowners' association, because of its ownership
25 of common elements or areas located within 200 feet of the property
26 which is the subject of the hearing, may be made in the same manner
27 as to a corporation without further notice to unit owners, co-owners,
28 or homeowners on account of such common elements or areas.

29 c. Upon the written request of an applicant, the administrative
30 officer of a municipality shall, within seven days, make and certify a
31 list from said current tax duplicates of names and addresses of owners
32 to whom the applicant is required to give notice pursuant to subsection
33 b. of this section. In addition, the administrative officer shall include
34 on the list the names, addresses and positions of those persons who,
35 not less than seven days prior to the date on which the applicant
36 requested the list, have registered to receive notice pursuant to
37 subsection h. of this section. The applicant shall be entitled to rely
38 upon the information contained in such list, and failure to give notice
39 to any owner or to any public utility, cable television company, or
40 local utility not on the list shall not invalidate any hearing or
41 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,
42 whichever is greater, may be charged for such list.

43 d. Notice of hearings on applications for development involving
44 property located within 200 feet of an adjoining municipality shall be
45 given by personal service or certified mail to the clerk of such
46 municipality.

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1 e. Notice shall be given by personal service or certified mail to the
2 county planning board of a hearing on an application for development
3 of property adjacent to an existing county road or proposed road
4 shown on the official county map or on the county master plan,
5 adjoining other county land or situated within 200 feet of a municipal
6 boundary.

7 f. Notice shall be given by personal service or certified mail to the
8 Commissioner of Transportation of a hearing on an application for
9 development of property adjacent to a State highway.

10 g. Notice shall be given by personal service or certified mail to the
11 State Planning Commission of a hearing on an application for
12 development of property which exceeds 150 acres or 500 dwelling
13 units. The notice shall include a copy of any maps or documents
14 required to be on file with the municipal clerk pursuant to subsection
15 b. of section 6 of P.L.1975, c.291 (C.40:55D-10).

16 h. Notice of hearings on applications for approval of a major
17 subdivision or a site plan not defined as a minor site plan under this act
18 requiring public notice pursuant to subsection a. of this section shall
19 be given, in the case of a public utility, cable television company or
20 local utility which possesses a right-of-way or easement within the
21 municipality and which has registered with the municipality in
22 accordance with section 5 of P.L.1991, c.412 (C.40:55D-12.1), by (1)
23 serving a copy of the notice on the person whose name appears on the
24 registration form on behalf of the public utility, cable television
25 company or local utility or (2) mailing a copy thereof by certified mail
26 to the person whose name appears on the registration form at the
27 address shown on that form.

28 i. The applicant shall file an affidavit of proof of service with the
29 municipal agency holding the hearing on the application for
30 development in the event that the applicant is required to give notice
31 pursuant to this section.

32 j. Notice pursuant to subsections d., e., f., g. and h. of this section
33 shall not be deemed to be required, unless public notice pursuant to
34 subsection a. and notice pursuant to subsection b. of this section are
35 required.

36 (cf: P.L.1991, c.412, s.4)

37

38 5. Section 14 of P.L.1975, c.291 (C.40:55D-23) is amended to
39 read as follows:

40 14. Planning board membership. a. The governing body may, by
41 ordinance, create a planning board of seven or nine members. All
42 members of the planning board, except for the Class II members set
43 forth below, shall be municipal residents. The membership shall
44 consist of, for convenience in designating the manner of appointment,
45 the four following classes:

46 Class I--the mayor or the mayor's designee in the absence of the

1 mayor or, in the case of the council-manager form of government
2 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210
3 (C.40:69A-1 et seq.) or "the municipal manager form of government
4 law" (R.S.40:79-1 et seq.), the manager, if so provided by the
5 aforesaid ordinance.

6 Class II--one of the officials of the municipality other than a
7 member of the governing body, to be appointed by the mayor;
8 provided that if there be an environmental commission, the member of
9 the environmental commission who is also a member of the planning
10 board as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall
11 be deemed to be the Class II planning board member for purposes of
12 this act in the event that there be among the Class IV or alternate
13 members of the planning board both a member of the zoning board of
14 adjustment and a member of the board of education.

15 Class III--a member of the governing body to be appointed by it.

16 Class IV--other citizens of the municipality, to be appointed by the
17 mayor or, in the case of the council-manager form of government
18 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210
19 (C.40:69A-1 et seq.) or "the municipal manager form of government
20 law" (R.S.40:79-1 et seq.), by the council, if so provided by the
21 aforesaid ordinance.

22 The members of Class IV shall hold no other municipal office,
23 position or employment, except that in the case of nine-member
24 boards, one such member may be a member of the zoning board of
25 adjustment or historic preservation commission. No member of the
26 board of education may be a Class IV member of the planning board,
27 except that in the case of a nine-member board, one Class IV member
28 may be a member of the board of education. If there be a municipal
29 environmental commission, the member of the environmental
30 commission who is also a member of the planning board, as required
31 by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV
32 planning board member, unless there be among the Class IV or
33 alternate members of the planning board both a member of the zoning
34 board of adjustment or historic preservation commission and a member
35 of the board of education, in which case the member common to the
36 planning board and municipal environmental commission shall be
37 deemed a Class II member of the planning board. For the purpose of
38 this section, membership on a municipal board or commission whose
39 function is advisory in nature, and the establishment of which is
40 discretionary and not required by statute, shall not be considered the
41 holding of municipal office.

42 b. The term of the member composing Class I shall correspond to
43 the mayor's or manager's official tenure or if the member is the mayor's
44 designee in the absence of the mayor, the designee shall serve at the
45 pleasure of the mayor during the mayor's official tenure. The terms of
46 the members composing Class II and Class III shall be for one year or

1 terminate at the completion of their respective terms of office,
2 whichever occurs first, except for a Class II member who is also a
3 member of the environmental commission. The term of a Class II or
4 Class IV member who is also a member of the environmental
5 commission shall be for three years or terminate at the completion of
6 his term of office as a member of the environmental commission,
7 whichever occurs first. The term of a Class IV member who is also a
8 member of the board of adjustment or board of education shall
9 terminate whenever he is no longer a member of such other body or at
10 the completion of his Class IV term, whichever occurs first. The terms
11 of all Class IV members first appointed under this act shall be so
12 determined that to the greatest practicable extent the expiration of
13 such terms shall be distributed evenly over the first four years after
14 their appointments; provided that the initial Class IV term of no
15 member shall exceed four years. Thereafter, the Class IV term of each
16 such member shall be four years. If a vacancy in any class shall occur
17 otherwise than by expiration of the planning board term, it shall be
18 filled by appointment, as above provided, for the unexpired term. No
19 member of the planning board shall be permitted to act on any matter
20 in which he has, either directly or indirectly, any personal or financial
21 interest. Any member other than a Class I member, after a public
22 hearing if he requests one, may be removed by the governing body for
23 cause.

24 c. In any municipality in which the term of the municipal governing
25 body commences on January 1, the governing body may, by ordinance,
26 provide that the term of appointment of any class of member of the
27 planning board appointed pursuant to this section shall commence on
28 January 1. In any municipality in which the term of the municipal
29 governing body commences on July 1, the governing body may, by
30 ordinance, provide that the term of appointment of any class of
31 member appointed pursuant to this section commence on July 1.

32 (cf: P.L.1994, c.158, s.1)

33

34 6. Section 13 of P.L.1979, c.216 (C.40:55D-23.1) is amended to
35 read as follows:

36 13. The governing body may, by ordinance, provide for the
37 appointment to the planning board of not more than two alternate
38 members, who shall be municipal residents. Alternate members shall
39 be appointed by the appointing authority for Class IV members, and
40 shall meet the qualifications of Class IV members of nine-member
41 planning boards. Alternate members shall be designated at the time of
42 appointment by the mayor as "Alternate No. 1" and "Alternate No. 2."
43 The terms of the alternate members shall be for 2 years, except that the
44 terms of the alternate members shall be such that the term of not more
45 than one alternate member shall expire in any 1 year; provided,
46 however, that in no instance shall the terms of the alternate members

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11

1 first appointed exceed 2 years. A vacancy occurring otherwise than by
2 expiration of term shall be filled by the appointing authority for the
3 unexpired term only.

4 No alternate member shall be permitted to act on any matter in
5 which he has either directly or indirectly any personal or financial
6 interest. An alternate member may, after public hearing if he requests
7 one, be removed by the governing body for cause.

8 Alternate members may participate in [discussions of the
9 proceedings] all matters but may not vote except in the absence or
10 disqualification of a regular member of any class. Participation of
11 alternate members shall not be deemed to increase the size of the
12 planning board established by ordinance of the governing body
13 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23). A vote
14 shall not be delayed in order that a regular member may vote instead
15 of an alternate member. In the event that a choice must be made as to
16 which alternate member is to vote, Alternate No. 1 shall vote.

17 (cf: P.L.1979, c.216, s.13)

18

19 7. Section 15 of P.L.1975, c.291 (C.40:55D-24) is amended to
20 read as follows:

21 15. Organization of planning board. The planning board shall elect
22 a chairman and vice chairman from the members of Class IV, select a
23 secretary who may or may not be a member or alternate member of the
24 planning board or a municipal employee, and create and fill such other
25 offices as established by ordinance. An alternate member shall not
26 serve as chairman or vice-chairman of the planning board. It may
27 employ, or contract for, and fix the compensation of legal counsel,
28 other than the municipal attorney, and experts, and other staff and
29 services as it may deem necessary, not exceeding, exclusive of gifts or
30 grants, the amount appropriated by the governing body for its use.
31 The governing body shall make provision in its budget and appropriate
32 funds for the expenses of the planning board.

33 (cf: P.L.1975, c.291, s.15)

34

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

37 30. Contribution for off-tract water, sewer, drainage, and street
38 improvements. The governing body may by ordinance adopt
39 regulations requiring a developer, as a condition for approval of a
40 subdivision or site plan, to pay [his] the pro-rata share of the cost of
41 providing only reasonable and necessary street improvements and
42 water, sewerage and drainage facilities, and easements therefor,
43 located [outside the property limits of the subdivision or
44 development] off-tract but necessitated or required by construction or
45 improvements within such subdivision or development. Such
46 regulations shall be based on circulation and comprehensive utility

1 service plans pursuant to subsections 19b.(4) and 19b.(5) of this act,
2 respectively, and shall establish fair and reasonable standards to
3 determine the proportionate or pro-rata amount of the cost of such
4 facilities that shall be borne by each developer or owner within a
5 related and common area, which standards shall not be altered
6 subsequent to preliminary approval. Where a developer pays the
7 amount determined as his pro-rata share under protest he shall institute
8 legal action within 1 year of such payment in order to preserve the
9 right to a judicial determination as to the fairness and reasonableness
10 of such amount.

11 (cf: P.L.1975, c.291, s.30)

12

13 9. Section 56 of P.L.1975, c.291 (C.40:55D-69) is amended to
14 read as follows:

15 56. Zoning board of adjustments. Upon the adoption of a zoning
16 ordinance, the governing body shall create, by ordinance, a zoning
17 board of adjustment unless the municipality is eligible for, and
18 exercises, the option provided by subsection c. of section 16 of
19 P.L.1975, c.291 (C.40:55D-25). A zoning board of adjustment shall
20 consist of seven regular members and may have not more than two
21 alternate members. All regular members and any alternate members
22 shall be municipal residents. Notwithstanding the provisions of any
23 other law or charter heretofore adopted, such ordinance shall provide
24 the method of appointment of all such members. Alternate members
25 shall be designated at the time of appointment by the authority
26 appointing them as "Alternate No. 1" and "Alternate No. 2." The
27 terms of the members first appointed under this act shall be so
28 determined that to the greatest practicable extent, the expiration of
29 such terms shall be distributed, in the case of regular members, evenly
30 over the first four years after their appointment, and in the case of
31 alternate members, evenly over the first two years after their
32 appointment; provided that the initial term of no regular members shall
33 exceed four years and that the initial term of no alternate member shall
34 exceed two years. Thereafter, the term of each regular member shall
35 be four years, and the term of each alternate member shall be two
36 years. No member may hold any elective office or position under the
37 municipality. No member of the board of adjustment shall be
38 permitted to act on any matter in which he has, either directly or
39 indirectly, any personal or financial interest. A member may, after
40 public hearing if he requests it, be removed by the governing body for
41 cause. A vacancy occurring otherwise than by expiration of term shall
42 be filled for the unexpired term only.

43 The board of adjustment shall elect a chairman and vice-chairman
44 from its regular members and select a secretary, who may or may not
45 be a member of the board of adjustment or a municipal employee.

46 Alternate members may participate in [discussions of the

1 proceedings] all matters but may not vote except in the absence or
2 disqualification of a regular member. Participation of alternate
3 members shall not be deemed to increase the size of the zoning board
4 of adjustment established by ordinance of the governing body pursuant
5 to section 56 of P.L.1975, c.291 (C.40:55D-69). A vote shall not be
6 delayed in order that a regular member may vote instead of an
7 alternate member. In the event that a choice must be made as to which
8 alternate member is to vote, Alternate No. 1 shall vote.
9 (cf: P.L.1985, c.516, s.27)

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11 10. This act shall take effect 60 days following enactment.

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STATEMENT

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16 This bill would amend the "Municipal Land Use Law," P.L.1975,
17 c.291 (C.40:55D-1 et seq.) as follows:

18 Sections 1 and 8 would amend section 3.2 of P.L.1975, c.291
19 (C.40:55D-5) and section 30 of P.L.1975, c.291 (C.40:55D-42) to
20 resolve an inconsistency concerning land improvements associated
21 with subdivision and site plan approvals. In Cameron & Cameron Inc.
22 v. Planning Board of the Township of Warren, 250 N.J. Super. 296
23 (App. Div. 1991), the court observed that the headnote of section 30
24 of P.L.1975, c.291 (C.40:55D-42) referenced "off-tract"
25 improvements as being subject to a pro-rata formula, whereas the body
26 of that section referenced improvements located "outside the property
27 limits" - a slightly broader category. Additional confusion resulted
28 from the imprecision of the phrase "contiguous portion of a street or
29 right-of-way" which is found in the definitions of off-site, off-tract and
30 on-tract. To remedy this situation, the bill inserts the term "off-tract"
31 within the body of section 30 of P.L.1975, c.291 (C.40:55D-42),
32 thereby making it consistent with the definitional section.
33 Additionally, the definitions of off-site, off-tract, on-site and on-tract
34 are altered generally by replacing the reference to a "contiguous
35 portion" of a street by the more precise "closest half of the abutting
36 street".

37 Section 1 would also define the term "municipal resident" as a
38 person who is domiciled in the municipality.

39 Section 2 would amend subsection g. of section 6 of P.L.1975,
40 c.291 (C.40:55D-10) to clarify that if only one member who voted for
41 an action taken by a municipal planning or zoning board attends a
42 subsequent meeting at which a memorializing resolution is presented,
43 the vote of that single member shall be sufficient to adopt the
44 resolution. The provision is not intended to change quorum
45 requirements for the subsequent meeting, but only to clarify the
46 number of votes required to adopt a memorializing resolution. This

1 change responds to Patel v. Planning Board, 258 N.J. Super. 437 (Law
2 Div. 1992) in which the judge ruled that the vote of one such member
3 was not sufficient.

4 Section 2 would also amend section 6 of P.L.1975, c.291
5 (C.40:55D-10) to provide that a municipality furnishing a transcript or
6 tape of the proceedings to an interested party may not charge the
7 interested party more than the actual cost of preparation of the
8 transcript or tape. This change was necessitated by the fact that court
9 reporters doing work outside of court charge at a higher rate than the
10 rate prescribed by N.J.S.2A:11-15.

11 Section 3 would expand section 9 of P.L.1979, c.216
12 (C.40:55D-10.2) to provide, with reference to continuing applications,
13 that members who may not have been members at the time of a
14 particular hearing may vote if the matter is pending and the new
15 member reads the transcript or listens to a recording of the prior
16 hearing.

17 Section 4 would clarify the notice provisions of section 7.1 of
18 P.L.1975, c.291 (C.40:55D-12) as to appeals of determinations of
19 administrative officers pursuant to paragraph (a) of section 57 of
20 P.L.1975, c.291 (C.40:55D-70), and requests for interpretation
21 pursuant to paragraph (b) of that section. In both cases, an option is
22 given to the municipality to require statutory notice by enacting a
23 procedural ordinance. In addition, section 4 would clarify that notice
24 pursuant to the section being amended would be required for
25 extensions of more than five years granted pursuant to subsection d.
26 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of
27 section 40 of P.L.1975, c.291 (C.40:55D-52), and for the modification
28 or elimination of significant conditions in a resolution in those
29 instances where the original application required the provision of
30 public notice.

31 Section 5 would clarify that all members of planning boards, except
32 for Class II members, must be municipal residents.

33 Section 6 would: clarify the right of alternate members of a
34 planning board to participate in all matters; require alternate members
35 to be municipal residents; and provide that the participation of
36 alternates in all matters does not change current quorum requirements.

37 Section 7 would amend section 15 of P.L.1975, c.291
38 (C.40:55D-24) to make uniform the provisions governing planning
39 boards and boards of adjustment with regard to governmental
40 appropriations. The language proposed to be added to this section
41 corresponds with the language found in section 58 of P.L.1975, c.291
42 (C.40:55D-71). In addition, this section would preclude an alternate
43 member from serving as the chairman or vice-chairman of the planning
44 board.

45 Section 9 would amend section 56 of P.L.1975, c.291
46 (C.40:55D-69) to: clarify the right of alternate members of a board of

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1 adjustment to participate in all matters; require all zoning board
2 members and alternates to be municipal residents; specify that the
3 chairman and vice-chairman must be elected from the regular
4 members; and provide that the participation of alternates in all matters
5 does not effect current quorum requirements.

ASSEMBLY LOCAL GOVERNMENT AND HOUSING
COMMITTEE

STATEMENT TO

SENATE, No. 170

STATE OF NEW JERSEY

DATED: JUNE 1, 1998

The Assembly Local Government and Housing Committee reports favorably Senate Bill No. 170.

Senate Bill No. 170 would amend the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) as follows:

Sections 1 and 8 would amend section 3.2 of P.L.1975, c.291 (C.40:55D-5) and section 30 of P.L.1975, c.291 (C.40:55D-42) to resolve an inconsistency concerning land improvements associated with subdivision and site plan approvals. In Cameron & Cameron Inc. v. Planning Board of the Township of Warren, 250 N.J. Super. 296 (App. Div. 1991), the court observed that the headnote of section 30 of P.L.1975, c.291 (C.40:55D-42) referenced "off-tract" improvements as being subject to a pro-rata formula, whereas the body of that section referenced improvements located "outside the property limits" - a slightly broader category. Additional confusion resulted from the imprecision of the phrase "contiguous portion of a street or right-of-way" which is found in the definitions of off-site, off-tract and on-tract. To remedy this situation, the bill inserts the term "off-tract" within the body of section 30 of P.L.1975, c.291 (C.40:55D-42), thereby making it consistent with the definitional section. Additionally, the definitions of off-site, off-tract, on-site and on-tract are altered generally by replacing the reference to a "contiguous portion" of a street by the more precise "closest half of the abutting street".

Section 1 would also define the term "municipal resident" as a person who is domiciled in the municipality.

Section 2 would amend subsection g. of section 6 of P.L.1975, c.291 (C.40:55D-10) to clarify that if only one member who voted for an action taken by a municipal planning or zoning board attends a subsequent meeting at which a memorializing resolution is presented, the vote of that single member shall be sufficient to adopt the resolution. The provision is not intended to change quorum requirements for the subsequent meeting, but only to clarify the number of votes required to adopt a memorializing resolution. This change responds to Patel v. Planning Board, 258 N.J. Super. 437 (Law Div. 1992) in which the judge ruled that the vote of one such member was not sufficient.

Section 2 would also amend section 6 of P.L.1975, c.291 (C.40:55D-10) to provide that a municipality furnishing a transcript or tape of the proceedings to an interested party may not charge the interested party more than the actual cost of preparation of the transcript or tape. This change was necessitated by the fact that court reporters doing work outside of court charge at a higher rate than the rate prescribed by N.J.S.28:7-4.

Section 3 would expand section 9 of P.L.1979, c.216 (C.40:55D-10.2) to provide, with reference to continuing applications, that members who may not have been members at the time of a particular hearing may vote if the matter is pending and the new member reads the transcript or listens to a recording of the prior hearing.

Section 4 would clarify the notice provisions of section 7.1 of P.L.1975, c.291 (C.40:55D-12) as to appeals of determinations of administrative officers pursuant to paragraph (a) of section 57 of P.L.1975, c.291 (C.40:55D-70), and requests for interpretation pursuant to paragraph (b) of that section. In both cases, an option is given to the municipality to require statutory notice by enacting a procedural ordinance. In addition, section 4 would clarify that notice pursuant to the section being amended would be required for extensions of more than five years granted pursuant to subsection d. of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of P.L.1975, c.291 (C.40:55D-52), and for the modification or elimination of significant conditions in a resolution in those instances where the original application required the provision of public notice.

Section 5 would clarify that all members of planning boards, except for Class II members, must be municipal residents.

Section 6 would: clarify the right of alternate members of a planning board to participate in all matters; require alternate members to be municipal residents; and provide that the participation of alternates in all matters does not change current quorum requirements.

Section 7 would amend section 15 of P.L.1975, c.291 (C.40:55D-24) to make uniform the provisions governing planning boards and boards of adjustment with regard to governmental appropriations. The language proposed to be added to this section corresponds with the language found in section 58 of P.L.1975, c.291 (C.40:55D-71). In addition, this section would preclude an alternate member from serving as the chairman or vice-chairman of the planning board.

Section 9 would amend section 56 of P.L.1975, c.291 (C.40:55D-69) to: clarify the right of alternate members of a board of adjustment to participate in all matters; require all zoning board members and alternates to be municipal residents; specify that the chairman and vice-chairman must be elected from the regular members; and provide that the participation of alternates in all matters does not affect current quorum requirements.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 170

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1998

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 170.

Senate Bill No. 170 would amend the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) as follows:

Sections 1 and 8 would amend section 3.2 of P.L.1975, c.291 (C.40:55D-5) and section 30 of P.L.1975, c.291 (C.40:55D-42) to resolve an inconsistency concerning land improvements associated with subdivision and site plan approvals. In Cameron & Cameron Inc. v. Planning Board of the Township of Warren, 250 N.J. Super. 296 (App. Div. 1991), the court observed that the headnote of section 30 of P.L.1975, c.291 (C.40:55D-42) referenced "off-tract" improvements as being subject to a pro-rata formula, whereas the body of that section referenced improvements located "outside the property limits" - a slightly broader category. Additional confusion resulted from the imprecision of the phrase "contiguous portion of a street or right-of-way" which is found in the definitions of off-site, off-tract and on-tract. To remedy this situation, the bill inserts the term "off-tract" within the body of section 30 of P.L.1975, c.291 (C.40:55D-42), thereby making it consistent with the definitional section. Additionally, the definitions of off-site, off-tract, on-site and on-tract are altered generally by replacing the reference to a "contiguous portion" of a street by the more precise "closest half of the abutting street".

Section 1 would also define the term "municipal resident" as a person who is domiciled in the municipality.

Section 2 would amend subsection g. of section 6 of P.L.1975, c.291 (C.40:55D-10) to clarify that if only one member who voted for an action taken by a municipal planning or zoning board attends a subsequent meeting at which a memorializing resolution is presented, the vote of that single member shall be sufficient to adopt the resolution. The provision is not intended to change quorum requirements for the subsequent meeting, but only to clarify the number of votes required to adopt a memorializing resolution. This change responds to Patel v. Planning Board, 258 N.J. Super. 437 (Law Div. 1992) in which the judge ruled that the vote of one such member was not sufficient.

Section 2 would also amend section 6 of P.L.1975, c.291

(C.40:55D-10) to provide that a municipality furnishing a transcript or tape of the proceedings to an interested party may not charge the interested party more than the actual cost of preparation of the transcript or tape. This change was necessitated by the fact that court reporters doing work outside of court charge at a higher rate than the rate prescribed by N.J.S.28:7-4.

Section 3 would expand section 9 of P.L.1979, c.216 (C.40:55D-10.2) to provide, with reference to continuing applications, that members who may not have been members at the time of a particular hearing may vote if the matter is pending and the new member reads the transcript or listens to a recording of the prior hearing.

Section 4 would clarify the notice provisions of section 7.1 of P.L.1975, c.291 (C.40:55D-12) as to appeals of determinations of administrative officers pursuant to paragraph (a) of section 57 of P.L.1975, c.291 (C.40:55D-70), and requests for interpretation pursuant to paragraph (b) of that section. In both cases, an option is given to the municipality to require statutory notice by enacting a procedural ordinance. In addition, section 4 would clarify that notice pursuant to the section being amended would be required for extensions of more than five years granted pursuant to subsection d. of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of P.L.1975, c.291 (C.40:55D-52), and for the modification or elimination of significant conditions in a resolution in those instances where the original application required the provision of public notice.

Section 5 would clarify that all members of planning boards, except for Class II members, must be municipal residents.

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Section 7 would amend section 15 of P.L.1975, c.291 (C.40:55D-24) to make uniform the provisions governing planning boards and boards of adjustment with regard to governmental appropriations. The language proposed to be added to this section corresponds with the language found in section 58 of P.L.1975, c.291 (C.40:55D-71). In addition, this section would preclude an alternate member from serving as the chairman or vice-chairman of the planning board.

Section 9 would amend section 56 of P.L.1975, c.291 (C.40:55D-69) to: clarify the right of alternate members of a board of adjustment to participate in all matters; require all zoning board members and alternates to be municipal residents; specify that the chairman and vice-chairman must be elected from the regular members; and provide that the participation of alternates in all matters does not affect current quorum requirements.

This bill was prefiled for introduction in the 1998 session pending

technical review. As reported, the bill includes the changes required by technical review which has been performed.