

# LEGISLATIVE HISTORY CHECKLIST

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## *LAWS of 1999*

**CHAPTER:** 11

**NJSA:** 40:14A-38 to 40:14A-45

(Escrow accounts and performance guarantees -- standards)

**BILL NO:**A511 (Substituted for S667 - 1<sup>st</sup> Reprint)

**SPONSOR(S):**Zecker and Kelly

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:**

**ASSEMBLY:**Local Government and Housing

**SENATE:**Community and Urban Affairs

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**

**ASSEMBLY:**September 28, 1998

**SENATE:** December 10, 1998

**DATE OF APPROVAL:**January 25, 1999

**THE FOLLOWING ARE ATTACHED IF AVAILABLE:**

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**FINAL TEXT OF BILL:** *Yes*

(Amendments during passage denoted by superscript numbers)

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**A511**

**SPONSORS STATEMENT:** *Yes*

**COMMITTEE STATEMENT:**

**ASSEMBLY:***Yes*

**SENATE:***Yes*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

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**SPONSORS STATEMENT:** *Yes*

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *No*

**SENATE:** *Yes*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**1<sup>st</sup> REPRINT** (Final version): *Yes*

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**GOVERNOR'S ACTIONS**

**VETO MESSAGE:** *No*

**GOVERNOR'S PRESS RELEASE ON SIGNING:** *No*

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**THE FOLLOWING WERE PRINTED:**

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**REPORTS:** *No*

**HEARINGS:** *No*

**NEWSPAPER ARTICLES:** *No*

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§§1-8  
C. 40:14A-38  
To 40:14A-45  
§§9-16  
C. 40:14B-71  
To 40:14B-78  
§17  
Note To §§1-16

P.L. 1999, CHAPTER 11, *approved January 25, 1999*  
Assembly, No. 511 (*First Reprint*)

1 AN ACT concerning certain sewerage and municipal authorities'  
2 escrow accounts, and supplementing P.L.1946, c.138 (C.40:14A-1  
3 et seq.) and P.L.1957, c.183 (C.40:14B-1 et seq.).  
4

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

8 1. The Legislature hereby finds and declares that:

9 a. It is necessary for the protection of the public health and safety  
10 that sewerage authorities review and approve plans for utility  
11 improvements which developers will convey to sewerage authorities  
12 or which will serve more than one user or service unit;

13 b. <sup>1</sup>**[Sewerage authorities have frequently required developers who**  
14 **will be installing utility improvements to post large sums of money**  
15 **early in the application process, long before the commencement of**  
16 **construction;**

17 **c.]<sup>1</sup> Changes in the operation and lending procedures of financial**  
18 **institutions have significantly restricted the amount of financing**  
19 **available for development activities prior to the initiation of**  
20 **construction;**

21 **[d.] c.<sup>1</sup> It is in the public interest to improve regulatory efficiency**  
22 **through standardized sewerage authority procedures;**

23 **[e.] d.<sup>1</sup> The public interest is best served through the use of**  
24 **standardized procedures to govern the approval and installation of**  
25 **utility improvements which are consistent with and follow the accepted**  
26 **procedures established in the "Municipal Land Use Law," P.L.1975,**  
27 **c.291 (C.40:55D-1 et seq.).**  
28

29 2. As used in sections 3 through 8 of P.L. , c. (C. )  
30 (now pending before the Legislature as this bill), "developer" means  
31 the legal or beneficial owner or owners of a lot or of any land  
32 proposed to be included in a proposed development, including the  
33 holder of an option or contract to purchase, or other person having an  
34 enforceable proprietary interest in such land, and who is submitting an

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> **Assembly ALH committee amendments adopted September 14, 1998.**

1 application for the installation of utility improvements pursuant to  
2 P.L. , c. (C. ) (now pending before the Legislature as this bill).  
3 <sup>1</sup>For the purposes of sections 1 through 8 of P.L. , c. (C. )  
4 (pending before the Legislature as this bill), "chief financial officer"  
5 means the authority official designated by Board of Commissioners to  
6 be responsible for the proper administration of the finances of the  
7 authority under the Local Bond Law, Local Fiscal Affairs Law, the  
8 Local Authorities Fiscal Control Law, the Local Public Contracts Law,  
9 and such other statutes, and such rules and regulations promulgated by  
10 the Director of the Division of Local Government Services, the Local  
11 Finance Board, or any other State agency as may pertain to the  
12 financial administration of the authority.<sup>1</sup>

13

14 3. a. Before recording of final subdivision plats or as a condition  
15 of final site plan approval, the sewerage authority may require and  
16 shall accept in accordance with the standards adopted pursuant to  
17 sections 3 through 8 of P.L. , c. (C. ) (now pending before the  
18 Legislature as this bill) for the purpose of assuring the installation and  
19 maintenance of on-tract sewer facility improvements:

20 (1) The furnishing of a performance guarantee in favor of the  
21 sewerage authority in an amount not to exceed 120% of the cost of  
22 installation, which cost shall be determined <sup>1</sup>or approved<sup>1</sup> by the  
23 sewerage authority engineer according to the method of calculation set  
24 forth in section 7 of P.L. , c. (C. ) (now pending before the  
25 Legislature as this bill), for improvements which the sewerage  
26 authority may deem necessary or appropriate including sanitary sewers  
27 and related sewer facilities and improvements.

28 The sewerage authority engineer shall prepare an itemized cost  
29 estimate of the improvements covered by the performance guarantee,  
30 <sup>1</sup>or approve an itemized cost estimate of the improvements as prepared  
31 by the developer's engineer.<sup>1</sup> which itemized cost estimate shall be  
32 appended to each performance guarantee posted by the obligor.

33 (2) The furnishing of a maintenance guarantee to be posted with  
34 the sewerage authority for a period not to exceed two years after final  
35 acceptance of the improvement, in an amount not to exceed 15% of  
36 the cost of the improvement, which cost shall be determined by the  
37 sewerage authority engineer according to the method of calculation set  
38 forth in section 7 of P.L. , c. (C. ) (now pending before the  
39 Legislature as this bill). <sup>1</sup>**【In the event that other governmental**  
40 **agencies or public utilities automatically will own the utilities to be**  
41 **installed or the improvements are covered by a performance or**  
42 **maintenance guarantee to another governmental agency, no**  
43 **performance or maintenance guarantee, as the case may be, shall be**  
44 **required by the sewerage authority for such utilities or**  
45 **improvements.】**<sup>1</sup>

46 b. The time allowed for installation of the improvements for which

1 the performance guarantee has been provided may be extended by the  
2 sewerage authority by resolution. As a condition or as part of any  
3 such extension, the amount of any performance guarantee shall be  
4 increased or reduced, as the case may be, to an amount not to exceed  
5 120% of the cost of the installation, which cost shall be determined by  
6 the sewerage authority engineer according to the method of  
7 calculation set forth in section 7 of P.L. , c. (C. ) (now  
8 pending before the Legislature as this bill) as of the time of the  
9 passage of the resolution.

10 c. If the required improvements are not completed or corrected in  
11 accordance with the performance guarantee, the obligor and surety, if  
12 any, shall be liable thereon to the sewerage authority for the  
13 reasonable cost of the improvements not completed or corrected and  
14 the sewerage authority may either prior to or after the receipt of the  
15 proceeds thereof complete such improvements. Such completion or  
16 correction of improvements shall be subject to the public bidding  
17 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
18 (C.40A:11-1 et seq.).

19 d. (1) Upon substantial completion of all required utility  
20 improvements, and the connection of same to the public system, the  
21 obligor may request of the sewerage authority in writing, by certified  
22 mail addressed in care of the <sup>1</sup>**[chairman]** chief administrative officer<sup>1</sup>  
23 of the sewerage authority, that the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup>  
24 prepare, in accordance with the itemized cost estimate prepared <sup>1</sup>or  
25 approved<sup>1</sup> by the sewerage authority engineer and appended to the  
26 performance guarantee pursuant to subsection a. of this section, a list  
27 of all uncompleted or unsatisfactory completed improvements. If such  
28 a request is made, the obligor shall send a copy of the request to the  
29 sewerage authority engineer. The request shall indicate which  
30 improvements have been completed and which improvements remain  
31 uncompleted in the judgment of the obligor. Thereupon the sewerage  
32 authority <sup>1</sup>**[engineer]**<sup>1</sup> shall inspect all improvements covered by  
33 obligor's request and shall file a detailed list and report, in writing,  
34 with the sewerage authority, and shall simultaneously send a copy  
35 thereof to the obligor not later than 45 days after receipt of the  
36 obligor's request.

37 (2) The list prepared by the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup> shall  
38 state, in detail, with respect to each improvement determined to be  
39 incomplete or unsatisfactory, the nature and extent of the  
40 incompleteness of each incomplete improvement or the nature and  
41 extent of, and remedy for, the unsatisfactory state of each completed  
42 improvement determined to be unsatisfactory. The report prepared by  
43 the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup> shall identify each improvement  
44 determined to be complete and satisfactory together with a  
45 recommendation as to the amount of reduction to be made in the  
46 performance guarantee relating to the completed and satisfactory

1 improvements, in accordance with the itemized cost estimate prepared  
2 'or approved' by the sewerage authority engineer and appended to the  
3 performance guarantee pursuant to subsection a. of this section.

4 e. (1) The sewerage authority, by resolution, shall either approve  
5 the improvements determined to be complete and satisfactory by the  
6 sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup>, or reject any or all of these  
7 improvements upon the establishment in the resolution of cause for  
8 rejection, and shall approve and authorize the amount of reduction to  
9 be made in the performance guarantee relating to the improvements  
10 accepted, in accordance with the itemized cost estimate prepared 'or  
11 approved' by the sewerage authority engineer and appended to the  
12 performance guarantee pursuant to subsection a. of this section. This  
13 resolution shall be adopted not later than 45 days after receipt of the  
14 list and report prepared by the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup>. Upon  
15 adoption of the resolution by the sewerage authority, the obligor shall  
16 be released from all liability pursuant to its performance guarantee,  
17 with respect to those approved improvements except for that portion  
18 adequately sufficient to secure completion or correction of the  
19 improvements not yet approved; provided that <sup>1</sup>**[30% of the]** an<sup>1</sup>  
20 amount of the performance guarantee <sup>1</sup>**[posted]** equal to the cost of  
21 the remaining open improvements<sup>1</sup> may be retained to ensure  
22 completion and acceptability of all improvements.

23 (2) If the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup> fails to send or provide  
24 the list and report as requested by the obligor pursuant to subsection  
25 d. of this section within 45 days from receipt of the request, the  
26 obligor may apply to the court in a summary manner for an order  
27 compelling the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup> to provide the list and  
28 report within a stated time and the cost of applying to the court,  
29 including reasonable attorney's fees, may be awarded to the prevailing  
30 party.

31 If the sewerage authority fails to approve or reject the  
32 improvements determined by the sewerage authority <sup>1</sup>**[engineer]**<sup>1</sup> to  
33 be complete and satisfactory or reduce the performance guarantee for  
34 the complete and satisfactory improvements within 45 days from the  
35 receipt of the sewerage <sup>1</sup>**[authority engineer's]** authority's<sup>1</sup> list and  
36 report, the obligor may apply to the court in a summary manner for an  
37 order compelling, within a stated time, approval of the complete and  
38 satisfactory improvements and approval of a reduction in the  
39 performance guarantee for the approvable complete and satisfactory  
40 improvements in accordance with the itemized cost estimate prepared  
41 'or approved' by the sewerage authority engineer and appended to the  
42 performance guarantee pursuant to subsection a. of this section; and  
43 the cost of applying to the court, including reasonable attorney's fees,  
44 may be awarded to the prevailing party.

45 (3) In the event that the obligor has made a cash deposit with the  
46 sewerage authority as part of the performance guarantee, then any

1 partial reduction granted in the performance guarantee pursuant to this  
2 subsection shall be applied to the cash deposit in the same proportion  
3 as the original cash deposit bears to the full amount of the  
4 performance guarantee.

5 f. If any portion of the required improvements is rejected, the  
6 sewerage authority may require the obligor to complete or correct  
7 such improvements and, upon completion or correction, the same  
8 procedure of notification, as set forth in this section shall be followed.

9 g. Nothing herein, however, shall be construed to limit the right of  
10 the obligor to contest by legal proceedings any determination of the  
11 sewerage authority or the sewerage authority engineer.

12 h. The obligor shall reimburse the sewerage authority for all  
13 reasonable inspection fees paid to the sewerage authority <sup>1</sup>【engineer】<sup>1</sup>  
14 for the foregoing inspection of improvements; provided that the  
15 sewerage authority may require of the developer a deposit for the  
16 inspection fees in an amount not to exceed, except for extraordinary  
17 circumstances, the greater of \$500 or 5% of the cost of improvements,  
18 which cost shall be determined pursuant to section 7 of P.L. , c.  
19 (C. ) (now pending before the Legislature as this bill). <sup>1</sup>【For  
20 those developments for which the reasonably anticipated fees are less  
21 than \$10,000, fees may, at the option of the developer, be paid in two  
22 installments. The initial amount deposited by a developer shall be 50%  
23 of the reasonably anticipated fees. When the balance on deposit drops  
24 to 10% of the reasonably anticipated fees because the amount  
25 deposited by the developer has been reduced by the amount paid to the  
26 sewerage authority engineer for inspection, the developer shall deposit  
27 the remaining 50% of the anticipated inspection fees. For those  
28 developments for which the reasonably anticipated fees are \$10,000 or  
29 greater, fees may, at the option of the developer, be paid in four  
30 installments. The initial amount deposited by a developer shall be 25%  
31 of the reasonably anticipated fees. When the balance on deposit drops  
32 to 10% of the reasonably anticipated fees because the amount  
33 deposited by the developer has been reduced by the amount paid to the  
34 sewerage authority engineer for inspection, the developer shall make  
35 additional deposits of 25% of the reasonably anticipated fees.】 The  
36 developer shall deposit with the sewerage authority the full amount of  
37 reasonably anticipated inspection fees unless the section of the  
38 development that is under construction is of a large size and the sewer  
39 or water utilities, or both, are going to be constructed in phases.  
40 When the developer and the sewerage authority reach agreement on  
41 the phasing of utility construction, the full amount of reasonably  
42 anticipated inspection fees for those phases scheduled to start  
43 construction shall be deposited with the sewerage authority.<sup>1</sup> The  
44 sewerage authority <sup>1</sup>【engineer】<sup>1</sup> shall not perform any inspection if  
45 sufficient funds to pay for those inspections are not on deposit.

46 i. In the event that final approval is by stages or sections of

1 development, the provisions of this section shall be applied by stage or  
2 section.

3 j. To the extent that any of the improvements have been dedicated  
4 to the sewerage authority on the subdivision plat or site plan, the  
5 sewerage authority shall be deemed, upon the release of any  
6 performance guarantee required pursuant to subsection a. of this  
7 section, to accept dedication for public use of sewer facilities and any  
8 other improvements made thereon according to site plans and  
9 subdivision plats approved by the sewerage authority, provided that  
10 such improvements have been inspected and have received final  
11 approval by the sewerage authority <sup>1</sup>[engineer]<sup>1</sup>.

12

13 4. a. The chief financial officer of a sewerage authority shall make  
14 all of the payments to professionals for services rendered to the  
15 sewerage authority for review of applications for development, review  
16 and preparation of documents, inspection of improvements or other  
17 purposes under the provisions of sections 3 through 8 of P.L. , c.  
18 (C. ) (now pending before the Legislature as this bill). Such  
19 fees or charges shall be based upon a schedule established by  
20 resolution. The application review and inspection charges shall be  
21 limited only to professional charges for review of applications, review  
22 and preparation of documents and inspections of developments under  
23 construction and review by outside consultants when an application is  
24 of a nature beyond the scope of the expertise of the professionals  
25 normally utilized by the sewerage authority. The only costs that shall  
26 be added to any such charges shall be actual out-of-pocket expenses  
27 of any such professionals or consultants including normal and typical  
28 expenses incurred in processing applications and inspecting  
29 improvements. The sewerage authority shall not bill the applicant, or  
30 charge any escrow account or deposit authorized under subsection b.  
31 of this section, for any sewerage authority clerical or administrative  
32 functions, overhead expenses, meeting room charges, or any other  
33 sewerage authority costs and expenses except as provided for in this  
34 section, nor shall a sewerage authority professional add any such  
35 charges to his bill. If the salary, staff support and overhead for a  
36 sewerage authority professional are provided by the sewerage  
37 authority, the charge shall not exceed 200% of the sum of the products  
38 resulting from multiplying (1) the hourly base salary, which shall be  
39 established annually by resolution, of each of the professionals by (2)  
40 the number of hours spent by the respective professional upon review  
41 of the application for development or inspection of the developer's  
42 improvements, as the case may be. For other professionals the charge  
43 shall be at the same rate as all other work of the same nature by the  
44 professional for the sewerage authority when fees are not reimbursed  
45 or otherwise imposed on applicants or developers.

46 b. If the sewerage authority requires of the developer a deposit



1 toward anticipated sewerage authority expenses for these professional  
2 services, the deposit shall be placed in an escrow account pursuant to  
3 section 1 of P.L.1985, c.314 (C.40:14A-7.3). The amount of the  
4 deposit required shall be reasonable in regard to the scale and  
5 complexity of the development. The amount of the initial deposit  
6 required shall be established by <sup>1</sup>the rules and regulations of the  
7 sewerage authority or by<sup>1</sup> resolution <sup>1</sup>of the sewerage authority, or  
8 both<sup>1</sup>. For review of applications for development proposing a  
9 subdivision, the amount of the deposit shall be calculated based on the  
10 number of proposed lots. For review of applications for development  
11 proposing a site plan, the amount of the deposit shall be based on the  
12 area of the site to be developed, or the square footage of buildings to  
13 be constructed, or both. Deposits for inspection fees shall be  
14 established in accordance with subsection h. of section 3 of P.L. , c.  
15 (C. ) (now pending before the Legislature as this bill).

16 c. Each payment charged to the deposit for review of applications,  
17 review and preparation of documents and inspection of improvements  
18 shall be pursuant to a voucher from the professional, which voucher  
19 shall identify the personnel performing the service, and for each date  
20 the services performed, the hours spent to one-quarter hour  
21 increments, the hourly rate and the expenses incurred. All  
22 professionals shall submit vouchers to the chief financial officer of the  
23 sewerage authority on a monthly basis in accordance with schedules  
24 and procedures established by the chief financial officer of the  
25 sewerage authority. If the services are provided by a sewerage  
26 authority employee, the sewerage authority employee shall prepare and  
27 submit to the chief financial officer of the sewerage authority a  
28 statement containing the same information as required on a voucher,  
29 on a monthly basis. The professional shall send an informational copy  
30 of all vouchers or statements submitted to the chief financial officer of  
31 the sewerage authority simultaneously to the applicant. The chief  
32 financial officer of the sewerage authority shall prepare and send to the  
33 applicant a statement which shall include an accounting of funds listing  
34 all deposits, interest earnings, disbursements, and the cumulative  
35 balance of the escrow account. This information shall be provided on  
36 a quarterly basis, if monthly charges are \$1,000 or less, or on a  
37 monthly basis if monthly charges exceed \$1,000. If an escrow account  
38 or deposit contains insufficient funds to enable the sewerage authority  
39 to perform required application reviews or improvement inspections,  
40 the chief financial officer of the sewerage authority shall provide the  
41 applicant with a notice of the insufficient escrow or deposit balance.  
42 In order for work to continue on the development or the application,  
43 the applicant shall within a reasonable time period post a deposit to the  
44 account in an amount to be agreed upon by the sewerage authority and  
45 the applicant. In the interim, any required health and safety  
46 inspections shall be made and charged back against the replenishment

1 of funds.

2 d. The following close-out procedure shall apply to all deposits and  
3 escrow accounts established under the provisions of sections 3 through  
4 8 of P.L. , c. (C. ) (now pending before the Legislature as this  
5 bill) and shall commence after the sewerage authority has granted final  
6 approval and signed the subdivision plat or site plan, in the case of  
7 application review escrows and deposits, or after the improvements  
8 have been approved as provided in section 3 of P.L. , c. (C. )  
9 (now pending before the Legislature as this bill), in the case of  
10 improvement inspection escrows and deposits. The applicant shall  
11 send written notice by certified mail to the chief financial officer of the  
12 sewerage authority, and to the relevant sewerage authority  
13 professional, that the application or the improvements, as the case may  
14 be, are completed. After receipt of such notice, the professional shall  
15 render a final bill to the chief financial officer of the sewerage  
16 authority within 30 days, and shall send a copy simultaneously to the  
17 applicant. The chief financial officer of the sewerage authority shall  
18 render a written final accounting to the applicant on the uses to which  
19 the deposit was put within 45 days of receipt of the final bill. Any  
20 balances remaining in the deposit or escrow account, including interest  
21 in accordance with section 1 of P.L.1985, c.314 (C.40:14A-7.3), shall  
22 be refunded to the developer along with the final accounting.

23 e. All professional charges for review of an application for  
24 development, review and preparation of documents or inspection of  
25 improvements shall be reasonable and necessary, given the status and  
26 progress of the application or construction. Review fees shall be  
27 charged only in connection with an application for development  
28 presently pending before the sewerage authority or upon review of  
29 compliance with conditions of approval, or review of requests for  
30 modification or amendment made by the applicant. A professional  
31 shall not review items which are subject to approval by any State  
32 governmental agency and not under sewerage authority jurisdiction  
33 except to the extent consultation with a State agency is necessary due  
34 to the effect of State approvals in the subdivision or site plan.  
35 Inspection fees shall be charged only for actual work shown on a  
36 subdivision or site plan or required by an approving resolution.  
37 Professionals inspecting improvements under construction shall charge  
38 only for inspections that are reasonably necessary to check the  
39 progress and quality of the work and such inspections shall be  
40 reasonably based on the approved development plans and documents.

41 f. If the sewerage authority retains a different professional or  
42 consultant in the place of the professional originally responsible for  
43 development, application review, or inspection of improvements, the  
44 sewerage authority shall be responsible for all time and expenses of the  
45 new professional to become familiar with the application or the  
46 project, and the sewerage authority shall not bill the applicant or

1 charge the deposit or the escrow account for any such services.

2

3 5. A sewerage authority shall not require that a maintenance  
4 guarantee required pursuant to section 3 of P.L. , c. (C. )  
5 (now pending before the Legislature as this bill) be in cash or that  
6 more than 10% of a performance guarantee pursuant to that section be  
7 in cash. A developer may, however, provide at his option some or all  
8 of a maintenance guarantee in cash, or more than 10% of a  
9 performance guarantee in cash.

10

11 6. a. An applicant shall notify in writing the sewerage authority  
12 with copies to the chief financial officer and the professional whenever  
13 the applicant disputes the charges made by a professional for service  
14 rendered to the sewerage authority in reviewing applications for  
15 development, review and preparation of documents, inspection of  
16 improvements, or other charges made pursuant to the provisions of  
17 sections 3 through 8 of P.L. , c. (C. ) (now pending before the  
18 Legislature as this bill). <sup>1</sup>The disputed charges shall be specifically  
19 outlined in the correspondence including the dates, time and personnel  
20 in dispute.<sup>1</sup> The sewerage authority, or its designee, shall within a  
21 reasonable time period attempt to remediate any disputed charges. If  
22 the matter is not resolved to the satisfaction of the applicant, the  
23 applicant may appeal to the county construction board of appeals  
24 established under section 9 of P.L.1975, c.217 (C.52:27D-127) any  
25 charge to an escrow account or a deposit by any sewerage authority  
26 professional or consultant, or the cost of the installation of  
27 improvements estimated by the sewerage authority engineer pursuant  
28 to section 7 of P.L. , c. (C. ) (now pending before the  
29 Legislature as this bill). An applicant or his authorized agent shall  
30 submit the appeal in writing to the county construction board of  
31 appeals. The applicant or his authorized agent shall simultaneously  
32 send a copy of the appeal to the sewerage authority and any  
33 professional whose charge is the subject of the appeal. An applicant  
34 shall file an appeal within 45 days from receipt of the informational  
35 copy of the professional's voucher required by subsection c. of section  
36 4 of P.L. , c. (C. ) (now pending before the Legislature as this  
37 bill), except that if the professional has not supplied the applicant with  
38 an informational copy of the voucher, then the applicant shall file his  
39 appeal within 60 days from receipt of the sewerage authority statement  
40 of activity against the deposit or escrow account required by  
41 subsection c. of section 4 of P.L. , c. (C. ) (now pending  
42 before the Legislature as this bill). An applicant may file an appeal for  
43 an ongoing series of charges by a professional during a period not  
44 exceeding six months to demonstrate that they represent a pattern of  
45 excessive or inaccurate charges. An applicant making use of this  
46 provision need not appeal each charge individually.

1       b. The county construction board of appeals shall hear the appeal,  
2 render a decision thereon, and file its decision with a statement of the  
3 reasons therefor with the sewerage authority not later than 10 business  
4 days following the submission of the appeal, unless such period of time  
5 has been extended with the consent of the applicant. The decision may  
6 approve, disapprove, or modify the professional charges appealed  
7 from. A copy of the decision shall be forwarded by certified or  
8 registered mail to the party making the appeal, the sewerage authority,  
9 and the professional involved in the appeal. Failure by the board to  
10 hear an appeal and render and file a decision thereon within the time  
11 limits prescribed in this subsection shall be deemed a denial of the  
12 appeal for purposes of a complaint, application, or appeal to a court  
13 of competent jurisdiction.

14       c. The county construction board of appeals shall provide rules for  
15 its procedure in accordance with this section. The board shall have the  
16 power to administer oaths and issue subpoenas to compel the  
17 attendance of witnesses and the production of relevant evidence, and  
18 the provisions of the "County and Municipal Investigations Law,"  
19 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

20       d. During the pendency of any appeal, the sewerage authority shall  
21 continue to process, hear, and decide the application for development,  
22 and to inspect the development in the normal course, and shall not  
23 withhold, delay, or deny reviews, inspections, signing of subdivision  
24 plats or site plans, the reduction or the release of performance or  
25 maintenance guarantees, the issuance of construction permits or  
26 certificates of occupancy, or any other approval or permit because an  
27 appeal has been filed or is pending under this section. The chief  
28 financial officer of the sewerage authority may pay <sup>1</sup>disputed<sup>1</sup> charges  
29 out of the appropriate escrow account or deposit for which an appeal  
30 has been filed. If a charge is disallowed after payment, the chief  
31 financial officer of the sewerage authority shall reimburse the deposit  
32 or escrow account in the amount of any such disallowed charge or  
33 refund the amount to the applicant. If a charge is disallowed after  
34 payment to a professional or consultant who is not an employee of the  
35 sewerage authority, the professional or consultant shall reimburse the  
36 sewerage authority in the amount of any such disallowed charge.

37       e. The Commissioner of Community Affairs shall promulgate rules  
38 and regulations pursuant to the "Administrative Procedure Act,"  
39 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
40 this section.

41

42       7. The cost of the installation of improvements for the purposes of  
43 section 3 of P.L.     , c.     (C.     ) (now pending before the  
44 Legislature as this bill) shall be estimated by the sewerage authority  
45 engineer <sup>1</sup>or by the applicant's engineer<sup>1</sup> based on documented  
46 construction costs for public improvements prevailing in the general

1 area of the sewerage authority. <sup>1</sup>Any estimate prepared by the  
2 applicant's engineer shall be subject to approval by the sewerage  
3 authority engineer.<sup>1</sup> The developer may appeal the sewerage authority  
4 engineer's estimate <sup>1</sup>or decision<sup>1</sup> to the county construction board of  
5 appeals established under section 9 of P.L.1975, c.217  
6 (C.52:27D-127).

7  
8 8. The sewerage authority shall, for the purposes of section 3 of  
9 P.L. , c. (C. ) (now pending before the Legislature as this  
10 bill), accept a performance guarantee or maintenance guarantee which  
11 is an irrevocable letter of credit if it:

12 a. Constitutes an unconditional payment obligation of the issuer  
13 running solely to the sewerage authority for an express initial period  
14 of time in the amount determined pursuant to section 3 of P.L. ,  
15 c. (C. ) (now pending before the Legislature as this bill);

16 b. Is issued by a banking or savings institution authorized to do and  
17 doing business in this State;

18 c. Is for a period of time of at least one year; and

19 d. Permits the sewerage authority to draw upon the letter of credit  
20 if the obligor fails to furnish another letter of credit which complies  
21 with the provisions of this section 30 days or more in advance of the  
22 expiration date of the letter of credit or such longer period in advance  
23 thereof as is stated in the letter of credit.

24

25 9. The Legislature hereby finds and declares that:

26 a. It is necessary for the protection of the public health and safety  
27 that municipal authorities review and approve plans for utility  
28 improvements which developers will convey to municipal authorities  
29 or which will serve more than one user or service unit;

30 b. <sup>1</sup>**[Municipal authorities have frequently required developers who**  
31 **will be installing utility improvements to post large sums of money**  
32 **early in the application process, long before the commencement of**  
33 **construction;**

34 **c.]**<sup>1</sup> Changes in the operation and lending procedures of financial  
35 institutions have significantly restricted the amount of financing  
36 available for development activities prior to the initiation of  
37 construction;

38 <sup>1</sup>**[d.] c.**<sup>1</sup> It is in the public interest to improve regulatory efficiency  
39 through standardized municipal authority procedures;

40 <sup>1</sup>**[e.] d.**<sup>1</sup> The public interest is best served through the use of  
41 standardized procedures to govern the approval and installation of  
42 utility improvements which are consistent with and follow the accepted  
43 procedures established in the "Municipal Land Use Law," P.L.1975,  
44 c.291 (C.40:55D-1 et seq.).

45

46 10. As used in sections 11 through 16 of P.L. , c. (C. )

1 (now pending before the Legislature as this bill), "developer" means  
2 the legal or beneficial owner or owners of a lot or of any land  
3 proposed to be included in a proposed development, including the  
4 holder of an option or contract to purchase, or other person having an  
5 enforceable proprietary interest in such land, and who is submitting an  
6 application for the installation of utility improvements pursuant to  
7 P.L. , c. (C. ) (now pending before the Legislature as this  
8 bill). <sup>1</sup>For the purposes of section 9 through 16 of P.L. , c.  
9 (C. ) (now pending before the Legislature as this bill), "chief  
10 financial officer" means the authority official designated by Board of  
11 Commissioners to be responsible for the proper administration of the  
12 finances of the authority under the Local Bond Law, Local Fiscal  
13 Affairs Law, the Local Authorities Fiscal Control Law, the Local  
14 Public Contracts Law, and such other statutes, and such rules and  
15 regulations promulgated by the Director of the Division of Local  
16 Government Services, the Local Finance Board, or any other State  
17 agency as may pertain to the financial administration of the authority.<sup>1</sup>

18

19 11. a. Before recording of final subdivision plats or as a condition  
20 of final site plan approval, the municipal authority may require and  
21 shall accept in accordance with the standards adopted pursuant to  
22 sections 11 through 16 of P.L. , c. (C. ) (now pending  
23 before the Legislature as this bill) for the purpose of assuring the  
24 installation and maintenance of on-tract utility improvements: (1)  
25 The furnishing of a performance guarantee in favor of the municipal  
26 authority in an amount not to exceed 120% of the cost of installation,  
27 which cost shall be determined <sup>1</sup>or approved<sup>1</sup> by the municipal  
28 authority engineer according to the method of calculation set forth in  
29 section 15 of P.L. , c. (C. ) (now pending before the  
30 Legislature as this bill), for improvements which the municipal  
31 authority may deem necessary or appropriate including sanitary sewers  
32 and related utility facilities and improvements.

33 The municipal authority engineer shall prepare an itemized cost  
34 estimate of the improvements covered by the performance guarantee,  
35 <sup>1</sup>or approve an itemized cost estimate of the improvements as prepared  
36 by the developer's engineer,<sup>1</sup> which itemized cost estimate shall be  
37 appended to each performance guarantee posted by the obligor.

38 (2) The furnishing of a maintenance guarantee to be posted with  
39 the municipal authority for a period not to exceed two years after final  
40 acceptance of the improvement, in an amount not to exceed 15% of  
41 the cost of the improvement, which cost shall be determined by the  
42 municipal authority engineer according to the method of calculation  
43 set forth in section 15 of P.L. , c. (C. ) (now pending before  
44 the Legislature as this bill). <sup>1</sup>[In the event that other governmental  
45 agencies or public utilities automatically will own the utilities to be  
46 installed or the improvements are covered by a performance or

1 maintenance guarantee to another governmental agency, no  
2 performance or maintenance guarantee, as the case may be, shall be  
3 required by the municipal authority for such utilities or  
4 improvements.]<sup>1</sup>

5 b. The time allowed for installation of the improvements for which  
6 the performance guarantee has been provided may be extended by the  
7 municipal authority by resolution. As a condition or as part of any  
8 such extension, the amount of any performance guarantee shall be  
9 increased or reduced, as the case may be, to an amount not to exceed  
10 120% of the cost of the installation, which cost shall be determined by  
11 the municipal authority engineer according to the method of  
12 calculation set forth in section 15 of P.L. , c. (C. ) (now  
13 pending before the Legislature as this bill) as of the time of the  
14 passage of the resolution.

15 c. If the required improvements are not completed or corrected in  
16 accordance with the performance guarantee, the obligor and surety, if  
17 any, shall be liable thereon to the municipal authority for the  
18 reasonable cost of the improvements not completed or corrected and  
19 the municipal authority may either prior to or after the receipt of the  
20 proceeds thereof complete such improvements. Such completion or  
21 correction of improvements shall be subject to the public bidding  
22 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
23 (C.40A:11-1 et seq.).

24 d. (1) Upon substantial completion of all required utility  
25 improvements, and the connection of same to the public system, the  
26 obligor may request of the municipal authority in writing, by certified  
27 mail addressed in care of the <sup>1</sup>**[chairman]** chief administrative officer<sup>1</sup>  
28 of the municipal authority, that the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup>  
29 prepare, in accordance with the itemized cost estimate prepared <sup>1</sup>or  
30 approved<sup>1</sup> by the municipal authority engineer and appended to the  
31 performance guarantee pursuant to subsection a. of this section, a list  
32 of all uncompleted or unsatisfactory completed improvements. If such  
33 a request is made, the obligor shall send a copy of the request to the  
34 municipal authority engineer. The request shall indicate which  
35 improvements have been completed and which improvements remain  
36 uncompleted in the judgment of the obligor. Thereupon the municipal  
37 authority <sup>1</sup>**[engineer]** <sup>1</sup>shall inspect all improvements covered by  
38 obligor's request and shall file a detailed list and report, in writing,  
39 with the municipal authority, and shall simultaneously send a copy  
40 thereof to the obligor not later than 45 days after receipt of the  
41 obligor's request.

42 (2) The list prepared by the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup> shall  
43 state, in detail, with respect to each improvement determined to be  
44 incomplete or unsatisfactory, the nature and extent of the  
45 incompleteness of each incomplete improvement or the nature and  
46 extent of, and remedy for, the unsatisfactory state of each completed

1 improvement determined to be unsatisfactory. The report prepared by  
2 the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup> shall identify each improvement  
3 determined to be complete and satisfactory together with a  
4 recommendation as to the amount of reduction to be made in the  
5 performance guarantee relating to the completed and satisfactory  
6 improvements, in accordance with the itemized cost estimate prepared  
7 <sup>1</sup>or approved<sup>1</sup> by the municipal authority engineer and appended to the  
8 performance guarantee pursuant to subsection a. of this section.

9 e. (1) The municipal authority, by resolution, shall either approve  
10 the improvements determined to be complete and satisfactory by the  
11 municipal authority <sup>1</sup>**[engineer]** <sup>1</sup>, or reject any or all of these  
12 improvements upon the establishment in the resolution of cause for  
13 rejection, and shall approve and authorize the amount of reduction to  
14 be made in the performance guarantee relating to the improvements  
15 accepted, in accordance with the itemized cost estimate prepared <sup>1</sup>or  
16 approved<sup>1</sup> by the municipal authority engineer and appended to the  
17 performance guarantee pursuant to subsection a. of this section. This  
18 resolution shall be adopted not later than 45 days after receipt of the  
19 list and report prepared by the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup>.  
20 Upon adoption of the resolution by the municipal authority, the  
21 obligor shall be released from all liability pursuant to its performance  
22 guarantee, with respect to those approved improvements except for  
23 that portion adequately sufficient to secure completion or correction  
24 of the improvements not yet approved; provided that <sup>1</sup>**[30% of the]  
25 an<sup>1</sup>** amount of the performance guarantee <sup>1</sup>**[posted] equal to the cost  
26 of the remaining open improvements<sup>1</sup>** may be retained to ensure  
27 completion and acceptability of all improvements.

28 (2) If the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup> fails to send or provide  
29 the list and report as requested by the obligor pursuant to subsection  
30 d. of this section within 45 days from receipt of the request, the  
31 obligor may apply to the court in a summary manner for an order  
32 compelling the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup> to provide the list and  
33 report within a stated time and the cost of applying to the court,  
34 including reasonable attorney's fees, may be awarded to the prevailing  
35 party.

36 If the municipal authority fails to approve or reject the  
37 improvements determined by the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup> to  
38 be complete and satisfactory or reduce the performance guarantee for  
39 the complete and satisfactory improvements within 45 days from the  
40 receipt of the municipal <sup>1</sup>**[authority engineer's] authority's<sup>1</sup>** list and  
41 report, the obligor may apply to the court in a summary manner for an  
42 order compelling, within a stated time, approval of the complete and  
43 satisfactory improvements and approval of a reduction in the  
44 performance guarantee for the approvable complete and satisfactory  
45 improvements in accordance with the itemized cost estimate prepared



1 <sup>1</sup>or approved<sup>1</sup> by the municipal authority engineer and appended to the  
2 performance guarantee pursuant to subsection a. of this section; and  
3 the cost of applying to the court, including reasonable attorney's fees,  
4 may be awarded to the prevailing party.

5 (3) In the event that the obligor has made a cash deposit with the  
6 municipal authority as part of the performance guarantee, then any  
7 partial reduction granted in the performance guarantee pursuant to this  
8 subsection shall be applied to the cash deposit in the same proportion  
9 as the original cash deposit bears to the full amount of the  
10 performance guarantee.

11 f. If any portion of the required improvements is rejected, the  
12 municipal authority may require the obligor to complete or correct  
13 such improvements and, upon completion or correction, the same  
14 procedure of notification, as set forth in this section shall be followed.

15 g. Nothing herein, however, shall be construed to limit the right of  
16 the obligor to contest by legal proceedings any determination of the  
17 municipal authority or the municipal authority engineer.

18 h. The obligor shall reimburse the municipal authority for all  
19 reasonable inspection fees paid to the municipal authority <sup>1</sup>**[engineer]**<sup>1</sup>  
20 for the foregoing inspection of improvements; provided that the  
21 municipal authority may require of the developer a deposit for the  
22 inspection fees in an amount not to exceed, except for extraordinary  
23 circumstances, the greater of \$500 or 5% of the cost of improvements,  
24 which cost shall be determined pursuant to section 15 of P.L. , c.  
25 (C. ) (now pending before the Legislature as this bill). <sup>1</sup>**[For**  
26 **those developments for which the reasonably anticipated fees are less**  
27 **than \$10,000, fees may, at the option of the developer, be paid in two**  
28 **installments. The initial amount deposited by a developer shall be 50%**  
29 **of the reasonably anticipated fees. When the balance on deposit drops**  
30 **to 10% of the reasonably anticipated fees because the amount**  
31 **deposited by the developer has been reduced by the amount paid to the**  
32 **municipal authority engineer for inspection, the developer shall deposit**  
33 **the remaining 50% of the anticipated inspection fees. For those**  
34 **developments for which the reasonably anticipated fees are \$10,000 or**  
35 **greater, fees may, at the option of the developer, be paid in four**  
36 **installments. The initial amount deposited by a developer shall be 25%**  
37 **of the reasonably anticipated fees. When the balance on deposit drops**  
38 **to 10% of the reasonably anticipated fees because the amount**  
39 **deposited by the developer has been reduced by the amount paid to the**  
40 **municipal authority engineer for inspection, the developer shall make**  
41 **additional deposits of 25% of the reasonably anticipated fees.]** The  
42 developer shall deposit with the municipal authority the full amount of  
43 reasonably anticipated inspection fees unless the section of the  
44 development that is under construction is of a large size and the sewer  
45 or water utilities, or both, are going to be constructed in phases.  
46 When the developer and the municipal authority reach agreement on

1 the phasing of utility construction, the full amount of reasonably  
2 anticipated inspection fees for those phases scheduled to start  
3 construction shall be deposited with the municipal authority.<sup>1</sup> The  
4 municipal authority <sup>1</sup>[engineer]<sup>1</sup> shall not perform any inspection if  
5 sufficient funds to pay for those inspections are not on deposit.

6 i. In the event that final approval is by stages or sections of  
7 development, the provisions of this section shall be applied by stage or  
8 section.

9 j. To the extent that any of the improvements have been dedicated  
10 to the municipal authority on the subdivision plat or site plan, the  
11 municipal authority shall be deemed, upon the release of any  
12 performance guarantee required pursuant to subsection a. of this  
13 section, to accept dedication for public use of water and sewer  
14 facilities and any other improvements made thereon according to site  
15 plans and subdivision plats approved by the municipal authority,  
16 provided that such improvements have been inspected and have  
17 received final approval by the municipal authority <sup>1</sup>[engineer]<sup>1</sup>.

18

19 12. a. The chief financial officer of a municipal authority shall  
20 make all of the payments to professionals for services rendered to the  
21 municipal authority for review of applications for development, review  
22 and preparation of documents, inspection of improvements or other  
23 purposes under the provisions of sections 11 through 16 of P.L. ,  
24 c. (C. ) (now pending before the Legislature as this bill).  
25 Such fees or charges shall be based upon a schedule established by  
26 resolution. The application review and inspection charges shall be  
27 limited only to professional charges for review of applications, review  
28 and preparation of documents and inspections of developments under  
29 construction and review by outside consultants when an application is  
30 of a nature beyond the scope of the expertise of the professionals  
31 normally utilized by the municipal authority. The only costs that shall  
32 be added to any such charges shall be actual out-of-pocket expenses  
33 of any such professionals or consultants including normal and typical  
34 expenses incurred in processing applications and inspecting  
35 improvements. The municipal authority shall not bill the applicant, or  
36 charge any escrow account or deposit authorized under subsection b.  
37 of this section, for any municipal authority clerical or administrative  
38 functions, overhead expenses, meeting room charges, or any other  
39 municipal authority costs and expenses except as provided for in this  
40 section, nor shall a municipal authority professional add any such  
41 charges to his bill. If the salary, staff support and overhead for a  
42 municipal authority professional are provided by the municipal  
43 authority, the charge shall not exceed 200% of the sum of the products  
44 resulting from multiplying (1) the hourly base salary, which shall be  
45 established annually by resolution, of each of the professionals by (2)  
46 the number of hours spent by the respective professional upon review

1 of the application for development or inspection of the developer's  
2 improvements, as the case may be. For other professionals the charge  
3 shall be at the same rate as all other work of the same nature by the  
4 professional for the municipal authority when fees are not reimbursed  
5 or otherwise imposed on applicants or developers.

6 b. If the municipal authority requires of the developer a deposit  
7 toward anticipated municipal authority expenses for these professional  
8 services, the deposit shall be placed in an escrow account pursuant to  
9 section 1 of P.L.1985, c.316 (C.40:14B-20.1). The amount of the  
10 deposit required shall be reasonable in regard to the scale and  
11 complexity of the development. The amount of the initial deposit  
12 required shall be established by <sup>1</sup>the rules and regulations of the  
13 municipal authority or by<sup>1</sup> resolution <sup>1</sup>of the municipal authority, or  
14 both<sup>1</sup>. For review of applications for development proposing a  
15 subdivision, the amount of the deposit shall be calculated based on the  
16 number of proposed lots. For review of applications for development  
17 proposing a site plan, the amount of the deposit shall be based on the  
18 area of the site to be developed, or the square footage of buildings to  
19 be constructed, or both. Deposits for inspection fees shall be  
20 established in accordance with subsection h. of section 11 of P.L. ,  
21 c. (C. ) (now pending before the Legislature as this bill).

22 c. Each payment charged to the deposit for review of applications,  
23 review and preparation of documents and inspection of improvements  
24 shall be pursuant to a voucher from the professional, which voucher  
25 shall identify the personnel performing the service, and for each date  
26 the services performed, the hours spent to one-quarter hour  
27 increments, the hourly rate and the expenses incurred. All  
28 professionals shall submit vouchers to the chief financial officer of the  
29 municipal authority on a monthly basis in accordance with schedules  
30 and procedures established by the chief financial officer of the  
31 municipal authority. If the services are provided by a municipal  
32 authority employee, the municipal authority employee shall prepare  
33 and submit to the chief financial officer of the municipal authority a  
34 statement containing the same information as required on a voucher,  
35 on a monthly basis. The professional shall send an informational copy  
36 of all vouchers or statements submitted to the chief financial officer of  
37 the municipal authority simultaneously to the applicant. The chief  
38 financial officer of the municipal authority shall prepare and send to  
39 the applicant a statement which shall include an accounting of funds  
40 listing all deposits, interest earnings, disbursements, and the  
41 cumulative balance of the escrow account. This information shall be  
42 provided on a quarterly basis, if monthly charges are \$1,000 or less,  
43 or on a monthly basis if monthly charges exceed \$1,000. If an escrow  
44 account or deposit contains insufficient funds to enable the municipal  
45 authority to perform required application reviews or improvement  
46 inspections, the chief financial officer of the municipal authority shall

1 provide the applicant with a notice of the insufficient escrow or  
2 deposit balance. In order for work to continue on the development or  
3 the application, the applicant shall within a reasonable time period post  
4 a deposit to the account in an amount to be agreed upon by the  
5 municipal authority and the applicant. In the interim, any required  
6 health and safety inspections shall be made and charged back against  
7 the replenishment of funds.

8 d. The following close-out procedure shall apply to all deposits and  
9 escrow accounts established under the provisions of sections 11  
10 through 16 of P.L. , c. (C. ) (now pending before the  
11 Legislature as this bill) and shall commence after the municipal  
12 authority has granted final approval and signed the subdivision plat or  
13 site plan, in the case of application review escrows and deposits, or  
14 after the improvements have been approved as provided in section 11  
15 of P.L. , c. (C. ) (now pending before the Legislature as this  
16 bill), in the case of improvement inspection escrows and deposits. The  
17 applicant shall send written notice by certified mail to the chief  
18 financial officer of the municipal authority, and to the relevant  
19 municipal authority professional, that the application or the  
20 improvements, as the case may be, are completed. After receipt of  
21 such notice, the professional shall render a final bill to the chief  
22 financial officer of the municipal authority within 30 days, and shall  
23 send a copy simultaneously to the applicant. The chief financial officer  
24 of the municipal authority shall render a written final accounting to the  
25 applicant on the uses to which the deposit was put within 45 days of  
26 receipt of the final bill. Any balances remaining in the deposit or  
27 escrow account, including interest in accordance with section 1 of  
28 P.L.1985, c.316 (C.40:14B-20.1), shall be refunded to the developer  
29 along with the final accounting.

30 e. All professional charges for review of an application for  
31 development, review and preparation of documents or inspection of  
32 improvements shall be reasonable and necessary, given the status and  
33 progress of the application or construction. Review fees shall be  
34 charged only in connection with an application for development  
35 presently pending before the municipal authority or upon review of  
36 compliance with conditions of approval, or review of requests for  
37 modification or amendment made by the applicant. A professional  
38 shall not review items which are subject to approval by any State  
39 governmental agency and not under municipal authority jurisdiction  
40 except to the extent consultation with a State agency is necessary due  
41 to the effect of State approvals in the subdivision or site plan.  
42 Inspection fees shall be charged only for actual work shown on a  
43 subdivision or site plan or required by an approving resolution.  
44 Professionals inspecting improvements under construction shall charge  
45 only for inspections that are reasonably necessary to check the  
46 progress and quality of the work and such inspections shall be

1 reasonably based on the approved development plans and documents.

2 f. If the municipal authority retains a different professional or  
3 consultant in the place of the professional originally responsible for  
4 development, application review, or inspection of improvements, the  
5 municipal authority shall be responsible for all time and expenses of  
6 the new professional to become familiar with the application or the  
7 project, and the municipal authority shall not bill the applicant or  
8 charge the deposit or the escrow account for any such services.

9

10 13. A municipal authority shall not require that a maintenance  
11 guarantee required pursuant to section 11 of P.L. , c. (C. )  
12 (now pending before the Legislature as this bill) be in cash or that  
13 more than 10% of a performance guarantee pursuant to that section be  
14 in cash. A developer may, however, provide at his option some or all  
15 of a maintenance guarantee in cash, or more than 10% of a  
16 performance guarantee in cash.

17

18 14. a. An applicant shall notify in writing the municipal authority  
19 with copies to the chief financial officer and the professional whenever  
20 the applicant disputes the charges made by a professional for service  
21 rendered to the municipal authority in reviewing applications for  
22 development, review and preparation of documents, inspection of  
23 improvements, or other charges made pursuant to the provisions of  
24 sections 11 through 16 of P.L. , c. (C. ) (now pending  
25 before the Legislature as this bill). <sup>1</sup>The disputed charges shall be  
26 specifically outlined in the correspondence including the dates, time  
27 and personnel in dispute.<sup>1</sup> The municipal authority, or its designee,  
28 shall within a reasonable time period attempt to remediate any  
29 disputed charges. If the matter is not resolved to the satisfaction of  
30 the applicant, the applicant may appeal to the county construction  
31 board of appeals established under section 9 of P.L.1975, c.217  
32 (C.52:27D-127) any charge to an escrow account or a deposit by any  
33 municipal authority professional or consultant, or the cost of the  
34 installation of improvements estimated by the municipal authority  
35 engineer pursuant to section 15 of P.L. , c. (C. ) (now  
36 pending before the Legislature as this bill). An applicant or his  
37 authorized agent shall submit the appeal in writing to the county  
38 construction board of appeals. The applicant or his authorized agent  
39 shall simultaneously send a copy of the appeal to the municipal  
40 authority and any professional whose charge is the subject of the  
41 appeal. An applicant shall file an appeal within 45 days from receipt  
42 of the informational copy of the professional's voucher required by  
43 subsection c. of section 12 of P.L. , c. (C. ) (now pending  
44 before the Legislature as this bill), except that if the professional has  
45 not supplied the applicant with an informational copy of the voucher,  
46 then the applicant shall file his appeal within 60 days from receipt of

1 the municipal authority statement of activity against the deposit or  
2 escrow account required by subsection c. of section 12 of P.L. ,  
3 c. (C. ) (now pending before the Legislature as this bill). An  
4 applicant may file an appeal for an ongoing series of charges by a  
5 professional during a period not exceeding six months to demonstrate  
6 that they represent a pattern of excessive or inaccurate charges. An  
7 applicant making use of this provision need not appeal each charge  
8 individually.

9 b. The county construction board of appeals shall hear the appeal,  
10 render a decision thereon, and file its decision with a statement of the  
11 reasons therefor with the municipal authority not later than 10 business  
12 days following the submission of the appeal, unless such period of time  
13 has been extended with the consent of the applicant. The decision may  
14 approve, disapprove, or modify the professional charges appealed  
15 from. A copy of the decision shall be forwarded by certified or  
16 registered mail to the party making the appeal, the municipal authority,  
17 and the professional involved in the appeal. Failure by the board to  
18 hear an appeal and render and file a decision thereon within the time  
19 limits prescribed in this subsection shall be deemed a denial of the  
20 appeal for purposes of a complaint, application, or appeal to a court  
21 of competent jurisdiction.

22 c. The county construction board of appeals shall provide rules for  
23 its procedure in accordance with this section. The board shall have the  
24 power to administer oaths and issue subpoenas to compel the  
25 attendance of witnesses and the production of relevant evidence, and  
26 the provisions of the "County and Municipal Investigations Law,"  
27 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

28 d. During the pendency of any appeal, the municipal authority shall  
29 continue to process, hear, and decide the application for development,  
30 and to inspect the development in the normal course, and shall not  
31 withhold, delay, or deny reviews, inspections, signing of subdivision  
32 plats or site plans, the reduction or the release of performance or  
33 maintenance guarantees, the issuance of construction permits or  
34 certificates of occupancy, or any other approval or permit because an  
35 appeal has been filed or is pending under this section. The chief  
36 financial officer of the municipal authority may pay <sup>1</sup>disputed<sup>1</sup> charges  
37 out of the appropriate escrow account or deposit for which an appeal  
38 has been filed. If a charge is disallowed after payment, the chief  
39 financial officer of the municipal authority shall reimburse the deposit  
40 or escrow account in the amount of any such disallowed charge or  
41 refund the amount to the applicant. If a charge is disallowed after  
42 payment to a professional or consultant who is not an employee of the  
43 municipal authority, the professional or consultant shall reimburse the  
44 municipal authority in the amount of any such disallowed charge.

45 e. The Commissioner of Community Affairs shall promulgate rules  
46 and regulations pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
2 this section.

3  
4 15. The cost of the installation of improvements for the purposes  
5 of section 11 of P.L. , c. (C. ) (now pending before the  
6 Legislature as this bill) shall be estimated by the municipal authority  
7 engineer <sup>1</sup>or by the applicant's<sup>1</sup> engineer based on documented  
8 construction costs for public improvements prevailing in the general  
9 area of the municipal authority. <sup>1</sup>Any estimate prepared by the  
10 applicant's engineer shall be subject to approval by the sewerage  
11 authority engineer.<sup>1</sup> The developer may appeal the municipal authority  
12 engineer's estimate <sup>1</sup>or decision<sup>1</sup> to the county construction board of  
13 appeals established under section 9 of P.L.1975, c.217  
14 (C.52:27D-127).

15  
16 16. The municipal authority shall, for the purposes of section 11 of  
17 P.L. , c. (C. ) (now pending before the Legislature as this  
18 bill), accept a performance guarantee or maintenance guarantee which  
19 is an irrevocable letter of credit if it:

20 a. Constitutes an unconditional payment obligation of the issuer  
21 running solely to the municipal authority for an express initial period  
22 of time in the amount determined pursuant to section 11 of P.L. , c.  
23 (C. ) (now pending before the Legislature as this bill);

24 b. Is issued by a banking or savings institution authorized to do and  
25 doing business in this State;

26 c. Is for a period of time of at least one year; and

27 d. Permits the municipal authority to draw upon the letter of credit  
28 if the obligor fails to furnish another letter of credit which complies  
29 with the provisions of this section 30 days or more in advance of the  
30 expiration date of the letter of credit or such longer period in advance  
31 thereof as is stated in the letter of credit.

32  
33 17. This act shall take effect 90 days after enactment.

34

35

36

37

38 Creates standards for certain sewerage and municipal and county  
39 utility authorities' escrow accounts.

# ASSEMBLY, No. 511

## STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblyman GERALD H. ZECKER**

**District 34 (Essex and Passaic)**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Creates standards for certain sewerage and municipal and county utility authorities' escrow accounts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.





1 AN ACT concerning certain sewerage and municipal authorities'  
2 escrow accounts, and supplementing P.L.1946, c.138 (C.40:14A-1  
3 et seq.) and P.L.1957, c.183 (C.40:14B-1 et seq.).  
4

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

7  
8 1. The Legislature hereby finds and declares that:

9 a. It is necessary for the protection of the public health and safety  
10 that sewerage authorities review and approve plans for utility  
11 improvements which developers will convey to sewerage authorities  
12 or which will serve more than one user or service unit;

13 b. Sewerage authorities have frequently required developers who  
14 will be installing utility improvements to post large sums of money  
15 early in the application process, long before the commencement of  
16 construction;

17 c. Changes in the operation and lending procedures of financial  
18 institutions have significantly restricted the amount of financing  
19 available for development activities prior to the initiation of  
20 construction;

21 d. It is in the public interest to improve regulatory efficiency  
22 through standardized sewerage authority procedures;

23 e. The public interest is best served through the use of standardized  
24 procedures to govern the approval and installation of utility  
25 improvements which are consistent with and follow the accepted  
26 procedures established in the "Municipal Land Use Law," P.L.1975,  
27 c.291 (C.40:55D-1 et seq.).  
28

29 2. As used in sections 3 through 8 of P.L. , c. (C. )  
30 (now pending before the Legislature as this bill), "developer" means  
31 the legal or beneficial owner or owners of a lot or of any land  
32 proposed to be included in a proposed development, including the  
33 holder of an option or contract to purchase, or other person having an  
34 enforceable proprietary interest in such land, and who is submitting an  
35 application for the installation of utility improvements pursuant to  
36 P.L. , c. (C. ) (now pending before the Legislature as this bill).  
37

38 3. a. Before recording of final subdivision plats or as a condition  
39 of final site plan approval, the sewerage authority may require and  
40 shall accept in accordance with the standards adopted pursuant to  
41 sections 3 through 8 of P.L. , c. (C. ) (now pending before the  
42 Legislature as this bill) for the purpose of assuring the installation and  
43 maintenance of on-tract sewer facility improvements:

44 (1) The furnishing of a performance guarantee in favor of the  
45 sewerage authority in an amount not to exceed 120% of the cost of  
46 installation, which cost shall be determined by the sewerage authority

1 engineer according to the method of calculation set forth in section 7  
2 of P.L. , c. (C. ) (now pending before the Legislature as this  
3 bill), for improvements which the sewerage authority may deem  
4 necessary or appropriate including sanitary sewers and related sewer  
5 facilities and improvements.

6 The sewerage authority engineer shall prepare an itemized cost  
7 estimate of the improvements covered by the performance guarantee,  
8 which itemized cost estimate shall be appended to each performance  
9 guarantee posted by the obligor.

10 (2) The furnishing of a maintenance guarantee to be posted with  
11 the sewerage authority for a period not to exceed two years after final  
12 acceptance of the improvement, in an amount not to exceed 15% of  
13 the cost of the improvement, which cost shall be determined by the  
14 sewerage authority engineer according to the method of calculation set  
15 forth in section 7 of P.L. , c. (C. ) (now pending before the  
16 Legislature as this bill). In the event that other governmental agencies  
17 or public utilities automatically will own the utilities to be installed or  
18 the improvements are covered by a performance or maintenance  
19 guarantee to another governmental agency, no performance or  
20 maintenance guarantee, as the case may be, shall be required by the  
21 sewerage authority for such utilities or improvements.

22 b. The time allowed for installation of the improvements for which  
23 the performance guarantee has been provided may be extended by the  
24 sewerage authority by resolution. As a condition or as part of any  
25 such extension, the amount of any performance guarantee shall be  
26 increased or reduced, as the case may be, to an amount not to exceed  
27 120% of the cost of the installation, which cost shall be determined by  
28 the sewerage authority engineer according to the method of  
29 calculation set forth in section 7 of P.L. , c. (C. ) (now  
30 pending before the Legislature as this bill) as of the time of the  
31 passage of the resolution.

32 c. If the required improvements are not completed or corrected in  
33 accordance with the performance guarantee, the obligor and surety, if  
34 any, shall be liable thereon to the sewerage authority for the  
35 reasonable cost of the improvements not completed or corrected and  
36 the sewerage authority may either prior to or after the receipt of the  
37 proceeds thereof complete such improvements. Such completion or  
38 correction of improvements shall be subject to the public bidding  
39 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
40 (C.40A:11-1 et seq.).

41 d. (1) Upon substantial completion of all required utility  
42 improvements, and the connection of same to the public system, the  
43 obligor may request of the sewerage authority in writing, by certified  
44 mail addressed in care of the chairman of the sewerage authority, that  
45 the sewerage authority engineer prepare, in accordance with the  
46 itemized cost estimate prepared by the sewerage authority engineer

1 and appended to the performance guarantee pursuant to subsection a.  
2 of this section, a list of all uncompleted or unsatisfactory completed  
3 improvements. If such a request is made, the obligor shall send a copy  
4 of the request to the sewerage authority engineer. The request shall  
5 indicate which improvements have been completed and which  
6 improvements remain uncompleted in the judgment of the obligor.  
7 Thereupon the sewerage authority engineer shall inspect all  
8 improvements covered by obligor's request and shall file a detailed list  
9 and report, in writing, with the sewerage authority, and shall  
10 simultaneously send a copy thereof to the obligor not later than 45  
11 days after receipt of the obligor's request.

12 (2) The list prepared by the sewerage authority engineer shall state,  
13 in detail, with respect to each improvement determined to be  
14 incomplete or unsatisfactory, the nature and extent of the  
15 incompleteness of each incomplete improvement or the nature and  
16 extent of, and remedy for, the unsatisfactory state of each completed  
17 improvement determined to be unsatisfactory. The report prepared by  
18 the sewerage authority engineer shall identify each improvement  
19 determined to be complete and satisfactory together with a  
20 recommendation as to the amount of reduction to be made in the  
21 performance guarantee relating to the completed and satisfactory  
22 improvements, in accordance with the itemized cost estimate prepared  
23 by the sewerage authority engineer and appended to the performance  
24 guarantee pursuant to subsection a. of this section.

25 e. (1) The sewerage authority, by resolution, shall either approve  
26 the improvements determined to be complete and satisfactory by the  
27 sewerage authority engineer, or reject any or all of these improvements  
28 upon the establishment in the resolution of cause for rejection, and  
29 shall approve and authorize the amount of reduction to be made in the  
30 performance guarantee relating to the improvements accepted, in  
31 accordance with the itemized cost estimate prepared by the sewerage  
32 authority engineer and appended to the performance guarantee  
33 pursuant to subsection a. of this section. This resolution shall be  
34 adopted not later than 45 days after receipt of the list and report  
35 prepared by the sewerage authority engineer. Upon adoption of the  
36 resolution by the sewerage authority, the obligor shall be released from  
37 all liability pursuant to its performance guarantee, with respect to  
38 those approved improvements except for that portion adequately  
39 sufficient to secure completion or correction of the improvements not  
40 yet approved; provided that 30% of the amount of the performance  
41 guarantee posted may be retained to ensure completion and  
42 acceptability of all improvements.

43 (2) If the sewerage authority engineer fails to send or provide the  
44 list and report as requested by the obligor pursuant to subsection d. of  
45 this section within 45 days from receipt of the request, the obligor may  
46 apply to the court in a summary manner for an order compelling the

1 sewerage authority engineer to provide the list and report within a  
2 stated time and the cost of applying to the court, including reasonable  
3 attorney's fees, may be awarded to the prevailing party.

4 If the sewerage authority fails to approve or reject the  
5 improvements determined by the sewerage authority engineer to be  
6 complete and satisfactory or reduce the performance guarantee for the  
7 complete and satisfactory improvements within 45 days from the  
8 receipt of the sewerage authority engineer's list and report, the obligor  
9 may apply to the court in a summary manner for an order compelling,  
10 within a stated time, approval of the complete and satisfactory  
11 improvements and approval of a reduction in the performance  
12 guarantee for the approvable complete and satisfactory improvements  
13 in accordance with the itemized cost estimate prepared by the  
14 sewerage authority engineer and appended to the performance  
15 guarantee pursuant to subsection a. of this section; and the cost of  
16 applying to the court, including reasonable attorney's fees, may be  
17 awarded to the prevailing party.

18 (3) In the event that the obligor has made a cash deposit with the  
19 sewerage authority as part of the performance guarantee, then any  
20 partial reduction granted in the performance guarantee pursuant to this  
21 subsection shall be applied to the cash deposit in the same proportion  
22 as the original cash deposit bears to the full amount of the  
23 performance guarantee.

24 f. If any portion of the required improvements is rejected, the  
25 sewerage authority may require the obligor to complete or correct  
26 such improvements and, upon completion or correction, the same  
27 procedure of notification, as set forth in this section shall be followed.

28 g. Nothing herein, however, shall be construed to limit the right of  
29 the obligor to contest by legal proceedings any determination of the  
30 sewerage authority or the sewerage authority engineer.

31 h. The obligor shall reimburse the sewerage authority for all  
32 reasonable inspection fees paid to the sewerage authority engineer for  
33 the foregoing inspection of improvements; provided that the sewerage  
34 authority may require of the developer a deposit for the inspection fees  
35 in an amount not to exceed, except for extraordinary circumstances,  
36 the greater of \$500 or 5% of the cost of improvements, which cost  
37 shall be determined pursuant to section 7 of P.L. , c. (C. )  
38 (now pending before the Legislature as this bill). For those  
39 developments for which the reasonably anticipated fees are less than  
40 \$10,000, fees may, at the option of the developer, be paid in two  
41 installments. The initial amount deposited by a developer shall be 50%  
42 of the reasonably anticipated fees. When the balance on deposit drops  
43 to 10% of the reasonably anticipated fees because the amount  
44 deposited by the developer has been reduced by the amount paid to the  
45 sewerage authority engineer for inspection, the developer shall deposit  
46 the remaining 50% of the anticipated inspection fees. For those

1 developments for which the reasonably anticipated fees are \$10,000 or  
2 greater, fees may, at the option of the developer, be paid in four  
3 installments. The initial amount deposited by a developer shall be 25%  
4 of the reasonably anticipated fees. When the balance on deposit drops  
5 to 10% of the reasonably anticipated fees because the amount  
6 deposited by the developer has been reduced by the amount paid to the  
7 sewerage authority engineer for inspection, the developer shall make  
8 additional deposits of 25% of the reasonably anticipated fees. The  
9 sewerage authority engineer shall not perform any inspection if  
10 sufficient funds to pay for those inspections are not on deposit.

11 i. In the event that final approval is by stages or sections of  
12 development, the provisions of this section shall be applied by stage or  
13 section.

14 j. To the extent that any of the improvements have been dedicated  
15 to the sewerage authority on the subdivision plat or site plan, the  
16 sewerage authority shall be deemed, upon the release of any  
17 performance guarantee required pursuant to subsection a. of this  
18 section, to accept dedication for public use of sewer facilities and any  
19 other improvements made thereon according to site plans and  
20 subdivision plats approved by the sewerage authority, provided that  
21 such improvements have been inspected and have received final  
22 approval by the sewerage authority engineer.

23

24 4. a. The chief financial officer of a sewerage authority shall make  
25 all of the payments to professionals for services rendered to the  
26 sewerage authority for review of applications for development, review  
27 and preparation of documents, inspection of improvements or other  
28 purposes under the provisions of sections 3 through 8 of P.L. ,  
29 c. (C. ) (now pending before the Legislature as this bill).  
30 Such fees or charges shall be based upon a schedule established by  
31 resolution. The application review and inspection charges shall be  
32 limited only to professional charges for review of applications, review  
33 and preparation of documents and inspections of developments under  
34 construction and review by outside consultants when an application is  
35 of a nature beyond the scope of the expertise of the professionals  
36 normally utilized by the sewerage authority. The only costs that shall  
37 be added to any such charges shall be actual out-of-pocket expenses  
38 of any such professionals or consultants including normal and typical  
39 expenses incurred in processing applications and inspecting  
40 improvements. The sewerage authority shall not bill the applicant, or  
41 charge any escrow account or deposit authorized under subsection b.  
42 of this section, for any sewerage authority clerical or administrative  
43 functions, overhead expenses, meeting room charges, or any other  
44 sewerage authority costs and expenses except as provided for in this  
45 section, nor shall a sewerage authority professional add any such  
46 charges to his bill. If the salary, staff support and overhead for a

1 sewerage authority professional are provided by the sewerage  
2 authority, the charge shall not exceed 200% of the sum of the products  
3 resulting from multiplying (1) the hourly base salary, which shall be  
4 established annually by resolution, of each of the professionals by (2)  
5 the number of hours spent by the respective professional upon review  
6 of the application for development or inspection of the developer's  
7 improvements, as the case may be. For other professionals the charge  
8 shall be at the same rate as all other work of the same nature by the  
9 professional for the sewerage authority when fees are not reimbursed  
10 or otherwise imposed on applicants or developers.

11 b. If the sewerage authority requires of the developer a deposit  
12 toward anticipated sewerage authority expenses for these professional  
13 services, the deposit shall be placed in an escrow account pursuant to  
14 section 1 of P.L.1985, c.314 (C.40:14A-7.3). The amount of the  
15 deposit required shall be reasonable in regard to the scale and  
16 complexity of the development. The amount of the initial deposit  
17 required shall be established by resolution. For review of applications  
18 for development proposing a subdivision, the amount of the deposit  
19 shall be calculated based on the number of proposed lots. For review  
20 of applications for development proposing a site plan, the amount of  
21 the deposit shall be based on the area of the site to be developed, or  
22 the square footage of buildings to be constructed, or both. Deposits  
23 for inspection fees shall be established in accordance with subsection  
24 h. of section 3 of P.L. , c. (C. ) (now pending before the  
25 Legislature as this bill).

26 c. Each payment charged to the deposit for review of applications,  
27 review and preparation of documents and inspection of improvements  
28 shall be pursuant to a voucher from the professional, which voucher  
29 shall identify the personnel performing the service, and for each date  
30 the services performed, the hours spent to one-quarter hour  
31 increments, the hourly rate and the expenses incurred. All  
32 professionals shall submit vouchers to the chief financial officer of the  
33 sewerage authority on a monthly basis in accordance with schedules  
34 and procedures established by the chief financial officer of the  
35 sewerage authority. If the services are provided by a sewerage  
36 authority employee, the sewerage authority employee shall prepare and  
37 submit to the chief financial officer of the sewerage authority a  
38 statement containing the same information as required on a voucher,  
39 on a monthly basis. The professional shall send an informational copy  
40 of all vouchers or statements submitted to the chief financial officer of  
41 the sewerage authority simultaneously to the applicant. The chief  
42 financial officer of the sewerage authority shall prepare and send to the  
43 applicant a statement which shall include an accounting of funds listing  
44 all deposits, interest earnings, disbursements, and the cumulative  
45 balance of the escrow account. This information shall be provided on  
46 a quarterly basis, if monthly charges are \$1,000 or less, or on a

1 monthly basis if monthly charges exceed \$1,000. If an escrow account  
2 or deposit contains insufficient funds to enable the sewerage authority  
3 to perform required application reviews or improvement inspections,  
4 the chief financial officer of the sewerage authority shall provide the  
5 applicant with a notice of the insufficient escrow or deposit balance.  
6 In order for work to continue on the development or the application,  
7 the applicant shall within a reasonable time period post a deposit to the  
8 account in an amount to be agreed upon by the sewerage authority and  
9 the applicant. In the interim, any required health and safety  
10 inspections shall be made and charged back against the replenishment  
11 of funds.

12 d. The following close-out procedure shall apply to all deposits and  
13 escrow accounts established under the provisions of sections 3 through  
14 8 of P.L. , c. (C. ) (now pending before the Legislature as this  
15 bill) and shall commence after the sewerage authority has granted final  
16 approval and signed the subdivision plat or site plan, in the case of  
17 application review escrows and deposits, or after the improvements  
18 have been approved as provided in section 3 of P.L. , c. (C. )  
19 (now pending before the Legislature as this bill), in the case of  
20 improvement inspection escrows and deposits. The applicant shall  
21 send written notice by certified mail to the chief financial officer of the  
22 sewerage authority, and to the relevant sewerage authority  
23 professional, that the application or the improvements, as the case may  
24 be, are completed. After receipt of such notice, the professional shall  
25 render a final bill to the chief financial officer of the sewerage  
26 authority within 30 days, and shall send a copy simultaneously to the  
27 applicant. The chief financial officer of the sewerage authority shall  
28 render a written final accounting to the applicant on the uses to which  
29 the deposit was put within 45 days of receipt of the final bill. Any  
30 balances remaining in the deposit or escrow account, including interest  
31 in accordance with section 1 of P.L.1985, c.314 (C.40:14A-7.3), shall  
32 be refunded to the developer along with the final accounting.

33 e. All professional charges for review of an application for  
34 development, review and preparation of documents or inspection of  
35 improvements shall be reasonable and necessary, given the status and  
36 progress of the application or construction. Review fees shall be  
37 charged only in connection with an application for development  
38 presently pending before the sewerage authority or upon review of  
39 compliance with conditions of approval, or review of requests for  
40 modification or amendment made by the applicant. A professional  
41 shall not review items which are subject to approval by any State  
42 governmental agency and not under sewerage authority jurisdiction  
43 except to the extent consultation with a State agency is necessary due  
44 to the effect of State approvals in the subdivision or site plan.  
45 Inspection fees shall be charged only for actual work shown on a  
46 subdivision or site plan or required by an approving resolution.

1 Professionals inspecting improvements under construction shall charge  
2 only for inspections that are reasonably necessary to check the  
3 progress and quality of the work and such inspections shall be  
4 reasonably based on the approved development plans and documents.

5 f. If the sewerage authority retains a different professional or  
6 consultant in the place of the professional originally responsible for  
7 development, application review, or inspection of improvements, the  
8 sewerage authority shall be responsible for all time and expenses of the  
9 new professional to become familiar with the application or the  
10 project, and the sewerage authority shall not bill the applicant or  
11 charge the deposit or the escrow account for any such services.

12

13 5. A sewerage authority shall not require that a maintenance  
14 guarantee required pursuant to section 3 of P.L. , c. (C. )  
15 (now pending before the Legislature as this bill) be in cash or that  
16 more than 10% of a performance guarantee pursuant to that section be  
17 in cash. A developer may, however, provide at his option some or all  
18 of a maintenance guarantee in cash, or more than 10% of a  
19 performance guarantee in cash.

20

21 6. a. An applicant shall notify in writing the sewerage authority  
22 with copies to the chief financial officer and the professional whenever  
23 the applicant disputes the charges made by a professional for service  
24 rendered to the sewerage authority in reviewing applications for  
25 development, review and preparation of documents, inspection of  
26 improvements, or other charges made pursuant to the provisions of  
27 sections 3 through 8 of P.L. , c. (C. ) (now pending before the  
28 Legislature as this bill). The sewerage authority, or its designee, shall  
29 within a reasonable time period attempt to remediate any disputed  
30 charges. If the matter is not resolved to the satisfaction of the  
31 applicant, the applicant may appeal to the county construction board  
32 of appeals established under section 9 of P.L.1975, c.217  
33 (C.52:27D-127) any charge to an escrow account or a deposit by any  
34 sewerage authority professional or consultant, or the cost of the  
35 installation of improvements estimated by the sewerage authority  
36 engineer pursuant to section 7 of P.L. , c. (C. ) (now pending  
37 before the Legislature as this bill). An applicant or his authorized  
38 agent shall submit the appeal in writing to the county construction  
39 board of appeals. The applicant or his authorized agent shall  
40 simultaneously send a copy of the appeal to the sewerage authority  
41 and any professional whose charge is the subject of the appeal. An  
42 applicant shall file an appeal within 45 days from receipt of the  
43 informational copy of the professional's voucher required by  
44 subsection c. of section 4 of P.L. , c. (C. ) (now pending  
45 before the Legislature as this bill), except that if the professional has  
46 not supplied the applicant with an informational copy of the voucher,



1 then the applicant shall file his appeal within 60 days from receipt of  
2 the sewerage authority statement of activity against the deposit or  
3 escrow account required by subsection c. of section 4 of P.L. ,  
4 c. (C. ) (now pending before the Legislature as this bill). An  
5 applicant may file an appeal for an ongoing series of charges by a  
6 professional during a period not exceeding six months to demonstrate  
7 that they represent a pattern of excessive or inaccurate charges. An  
8 applicant making use of this provision need not appeal each charge  
9 individually.

10 b. The county construction board of appeals shall hear the appeal,  
11 render a decision thereon, and file its decision with a statement of the  
12 reasons therefor with the sewerage authority not later than 10 business  
13 days following the submission of the appeal, unless such period of time  
14 has been extended with the consent of the applicant. The decision may  
15 approve, disapprove, or modify the professional charges appealed  
16 from. A copy of the decision shall be forwarded by certified or  
17 registered mail to the party making the appeal, the sewerage authority,  
18 and the professional involved in the appeal. Failure by the board to  
19 hear an appeal and render and file a decision thereon within the time  
20 limits prescribed in this subsection shall be deemed a denial of the  
21 appeal for purposes of a complaint, application, or appeal to a court  
22 of competent jurisdiction.

23 c. The county construction board of appeals shall provide rules for  
24 its procedure in accordance with this section. The board shall have the  
25 power to administer oaths and issue subpoenas to compel the  
26 attendance of witnesses and the production of relevant evidence, and  
27 the provisions of the "County and Municipal Investigations Law,"  
28 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

29 d. During the pendency of any appeal, the sewerage authority shall  
30 continue to process, hear, and decide the application for development,  
31 and to inspect the development in the normal course, and shall not  
32 withhold, delay, or deny reviews, inspections, signing of subdivision  
33 plats or site plans, the reduction or the release of performance or  
34 maintenance guarantees, the issuance of construction permits or  
35 certificates of occupancy, or any other approval or permit because an  
36 appeal has been filed or is pending under this section. The chief  
37 financial officer of the sewerage authority may pay charges out of the  
38 appropriate escrow account or deposit for which an appeal has been  
39 filed. If a charge is disallowed after payment, the chief financial  
40 officer of the sewerage authority shall reimburse the deposit or escrow  
41 account in the amount of any such disallowed charge or refund the  
42 amount to the applicant. If a charge is disallowed after payment to a  
43 professional or consultant who is not an employee of the sewerage  
44 authority, the professional or consultant shall reimburse the sewerage  
45 authority in the amount of any such disallowed charge.

46 e. The Commissioner of Community Affairs shall promulgate rules

1 and regulations pursuant to the "Administrative Procedure Act,"  
2 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
3 this section.

4  
5 7. The cost of the installation of improvements for the purposes of  
6 section 3 of P.L. , c. (C. ) (now pending before the  
7 Legislature as this bill) shall be estimated by the sewerage authority  
8 engineer based on documented construction costs for public  
9 improvements prevailing in the general area of the sewerage authority.  
10 The developer may appeal the sewerage authority engineer's estimate  
11 to the county construction board of appeals established under section  
12 9 of P.L.1975, c.217 (C.52:27D-127).

13  
14 8. The sewerage authority shall, for the purposes of section 3 of  
15 P.L. , c. (C. ) (now pending before the Legislature as this  
16 bill), accept a performance guarantee or maintenance guarantee which  
17 is an irrevocable letter of credit if it:

18 a. Constitutes an unconditional payment obligation of the issuer  
19 running solely to the sewerage authority for an express initial period  
20 of time in the amount determined pursuant to section 3 of P.L. ,  
21 c. (C. ) (now pending before the Legislature as this bill);

22 b. Is issued by a banking or savings institution authorized to do and  
23 doing business in this State;

24 c. Is for a period of time of at least one year; and

25 d. Permits the sewerage authority to draw upon the letter of credit  
26 if the obligor fails to furnish another letter of credit which complies  
27 with the provisions of this section 30 days or more in advance of the  
28 expiration date of the letter of credit or such longer period in advance  
29 thereof as is stated in the letter of credit.

30  
31 9. The Legislature hereby finds and declares that:

32 a. It is necessary for the protection of the public health and safety  
33 that municipal authorities review and approve plans for utility  
34 improvements which developers will convey to municipal authorities  
35 or which will serve more than one user or service unit;

36 b. Municipal authorities have frequently required developers who  
37 will be installing utility improvements to post large sums of money  
38 early in the application process, long before the commencement of  
39 construction;

40 c. Changes in the operation and lending procedures of financial  
41 institutions have significantly restricted the amount of financing  
42 available for development activities prior to the initiation of  
43 construction;

44 d. It is in the public interest to improve regulatory efficiency  
45 through standardized municipal authority procedures;

46 e. The public interest is best served through the use of standardized

1 procedures to govern the approval and installation of utility  
2 improvements which are consistent with and follow the accepted  
3 procedures established in the "Municipal Land Use Law," P.L.1975,  
4 c.291 (C.40:55D-1 et seq.).

5  
6 10. As used in sections 11 through 16 of P.L. , c. (C. )  
7 (now pending before the Legislature as this bill), "developer" means  
8 the legal or beneficial owner or owners of a lot or of any land  
9 proposed to be included in a proposed development, including the  
10 holder of an option or contract to purchase, or other person having an  
11 enforceable proprietary interest in such land, and who is submitting an  
12 application for the installation of utility improvements pursuant to  
13 P.L. , c. (C. ) (now pending before the Legislature as this  
14 bill).

15  
16 11. a. Before recording of final subdivision plats or as a condition  
17 of final site plan approval, the municipal authority may require and  
18 shall accept in accordance with the standards adopted pursuant to  
19 sections 11 through 16 of P.L. , c. (C. ) (now pending  
20 before the Legislature as this bill) for the purpose of assuring the  
21 installation and maintenance of on-tract utility improvements:

22 (1) The furnishing of a performance guarantee in favor of the  
23 municipal authority in an amount not to exceed 120% of the cost of  
24 installation, which cost shall be determined by the municipal authority  
25 engineer according to the method of calculation set forth in section 15  
26 of P.L. , c. (C. ) (now pending before the Legislature as this  
27 bill), for improvements which the municipal authority may deem  
28 necessary or appropriate including sanitary sewers and related utility  
29 facilities and improvements.

30 The municipal authority engineer shall prepare an itemized cost  
31 estimate of the improvements covered by the performance guarantee,  
32 which itemized cost estimate shall be appended to each performance  
33 guarantee posted by the obligor.

34 (2) The furnishing of a maintenance guarantee to be posted with  
35 the municipal authority for a period not to exceed two years after final  
36 acceptance of the improvement, in an amount not to exceed 15% of  
37 the cost of the improvement, which cost shall be determined by the  
38 municipal authority engineer according to the method of calculation  
39 set forth in section 15 of P.L. , c. (C. ) (now pending before  
40 the Legislature as this bill). In the event that other governmental  
41 agencies or public utilities automatically will own the utilities to be  
42 installed or the improvements are covered by a performance or  
43 maintenance guarantee to another governmental agency, no  
44 performance or maintenance guarantee, as the case may be, shall be  
45 required by the municipal authority for such utilities or improvements.

46 b. The time allowed for installation of the improvements for which

1 the performance guarantee has been provided may be extended by the  
2 municipal authority by resolution. As a condition or as part of any  
3 such extension, the amount of any performance guarantee shall be  
4 increased or reduced, as the case may be, to an amount not to exceed  
5 120% of the cost of the installation, which cost shall be determined by  
6 the municipal authority engineer according to the method of  
7 calculation set forth in section 15 of P.L. , c. (C. ) (now  
8 pending before the Legislature as this bill) as of the time of the  
9 passage of the resolution.

10 c. If the required improvements are not completed or corrected in  
11 accordance with the performance guarantee, the obligor and surety, if  
12 any, shall be liable thereon to the municipal authority for the  
13 reasonable cost of the improvements not completed or corrected and  
14 the municipal authority may either prior to or after the receipt of the  
15 proceeds thereof complete such improvements. Such completion or  
16 correction of improvements shall be subject to the public bidding  
17 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
18 (C.40A:11-1 et seq.).

19 d. (1) Upon substantial completion of all required utility  
20 improvements, and the connection of same to the public system, the  
21 obligor may request of the municipal authority in writing, by certified  
22 mail addressed in care of the chairman of the municipal authority, that  
23 the municipal authority engineer prepare, in accordance with the  
24 itemized cost estimate prepared by the municipal authority engineer  
25 and appended to the performance guarantee pursuant to subsection a.  
26 of this section, a list of all uncompleted or unsatisfactory completed  
27 improvements. If such a request is made, the obligor shall send a copy  
28 of the request to the municipal authority engineer. The request shall  
29 indicate which improvements have been completed and which  
30 improvements remain uncompleted in the judgment of the obligor.  
31 Thereupon the municipal authority engineer shall inspect all  
32 improvements covered by obligor's request and shall file a detailed list  
33 and report, in writing, with the municipal authority, and shall  
34 simultaneously send a copy thereof to the obligor not later than 45  
35 days after receipt of the obligor's request.

36 (2) The list prepared by the municipal authority engineer shall  
37 state, in detail, with respect to each improvement determined to be  
38 incomplete or unsatisfactory, the nature and extent of the  
39 incompleteness of each incomplete improvement or the nature and  
40 extent of, and remedy for, the unsatisfactory state of each completed  
41 improvement determined to be unsatisfactory. The report prepared by  
42 the municipal authority engineer shall identify each improvement  
43 determined to be complete and satisfactory together with a  
44 recommendation as to the amount of reduction to be made in the  
45 performance guarantee relating to the completed and satisfactory  
46 improvements, in accordance with the itemized cost estimate prepared

1 by the municipal authority engineer and appended to the performance  
2 guarantee pursuant to subsection a. of this section.

3 e. (1) The municipal authority, by resolution, shall either approve  
4 the improvements determined to be complete and satisfactory by the  
5 municipal authority engineer, or reject any or all of these  
6 improvements upon the establishment in the resolution of cause for  
7 rejection, and shall approve and authorize the amount of reduction to  
8 be made in the performance guarantee relating to the improvements  
9 accepted, in accordance with the itemized cost estimate prepared by  
10 the municipal authority engineer and appended to the performance  
11 guarantee pursuant to subsection a. of this section. This resolution  
12 shall be adopted not later than 45 days after receipt of the list and  
13 report prepared by the municipal authority engineer. Upon adoption  
14 of the resolution by the municipal authority, the obligor shall be  
15 released from all liability pursuant to its performance guarantee, with  
16 respect to those approved improvements except for that portion  
17 adequately sufficient to secure completion or correction of the  
18 improvements not yet approved; provided that 30% of the amount of  
19 the performance guarantee posted may be retained to ensure  
20 completion and acceptability of all improvements.

21 (2) If the municipal authority engineer fails to send or provide the  
22 list and report as requested by the obligor pursuant to subsection d. of  
23 this section within 45 days from receipt of the request, the obligor may  
24 apply to the court in a summary manner for an order compelling the  
25 municipal authority engineer to provide the list and report within a  
26 stated time and the cost of applying to the court, including reasonable  
27 attorney's fees, may be awarded to the prevailing party.

28 If the municipal authority fails to approve or reject the  
29 improvements determined by the municipal authority engineer to be  
30 complete and satisfactory or reduce the performance guarantee for the  
31 complete and satisfactory improvements within 45 days from the  
32 receipt of the municipal authority engineer's list and report, the obligor  
33 may apply to the court in a summary manner for an order compelling,  
34 within a stated time, approval of the complete and satisfactory  
35 improvements and approval of a reduction in the performance  
36 guarantee for the approvable complete and satisfactory improvements  
37 in accordance with the itemized cost estimate prepared by the  
38 municipal authority engineer and appended to the performance  
39 guarantee pursuant to subsection a. of this section; and the cost of  
40 applying to the court, including reasonable attorney's fees, may be  
41 awarded to the prevailing party.

42 (3) In the event that the obligor has made a cash deposit with the  
43 municipal authority as part of the performance guarantee, then any  
44 partial reduction granted in the performance guarantee pursuant to this  
45 subsection shall be applied to the cash deposit in the same proportion  
46 as the original cash deposit bears to the full amount of the

1 performance guarantee.

2 f. If any portion of the required improvements is rejected, the  
3 municipal authority may require the obligor to complete or correct  
4 such improvements and, upon completion or correction, the same  
5 procedure of notification, as set forth in this section shall be followed.

6 g. Nothing herein, however, shall be construed to limit the right of  
7 the obligor to contest by legal proceedings any determination of the  
8 municipal authority or the municipal authority engineer.

9 h. The obligor shall reimburse the municipal authority for all  
10 reasonable inspection fees paid to the municipal authority engineer for  
11 the foregoing inspection of improvements; provided that the municipal  
12 authority may require of the developer a deposit for the inspection fees  
13 in an amount not to exceed, except for extraordinary circumstances,  
14 the greater of \$500 or 5% of the cost of improvements, which cost  
15 shall be determined pursuant to section 15 of P.L. , c. (C. )  
16 (now pending before the Legislature as this bill). For those  
17 developments for which the reasonably anticipated fees are less than  
18 \$10,000, fees may, at the option of the developer, be paid in two  
19 installments. The initial amount deposited by a developer shall be 50%  
20 of the reasonably anticipated fees. When the balance on deposit drops  
21 to 10% of the reasonably anticipated fees because the amount  
22 deposited by the developer has been reduced by the amount paid to the  
23 municipal authority engineer for inspection, the developer shall deposit  
24 the remaining 50% of the anticipated inspection fees. For those  
25 developments for which the reasonably anticipated fees are \$10,000 or  
26 greater, fees may, at the option of the developer, be paid in four  
27 installments. The initial amount deposited by a developer shall be 25%  
28 of the reasonably anticipated fees. When the balance on deposit drops  
29 to 10% of the reasonably anticipated fees because the amount  
30 deposited by the developer has been reduced by the amount paid to the  
31 municipal authority engineer for inspection, the developer shall make  
32 additional deposits of 25% of the reasonably anticipated fees. The  
33 municipal authority engineer shall not perform any inspection if  
34 sufficient funds to pay for those inspections are not on deposit.

35 i. In the event that final approval is by stages or sections of  
36 development, the provisions of this section shall be applied by stage or  
37 section.

38 j. To the extent that any of the improvements have been dedicated  
39 to the municipal authority on the subdivision plat or site plan, the  
40 municipal authority shall be deemed, upon the release of any  
41 performance guarantee required pursuant to subsection a. of this  
42 section, to accept dedication for public use of water and sewer  
43 facilities and any other improvements made thereon according to site  
44 plans and subdivision plats approved by the municipal authority,  
45 provided that such improvements have been inspected and have  
46 received final approval by the municipal authority engineer.

1       12. a. The chief financial officer of a municipal authority shall  
2 make all of the payments to professionals for services rendered to the  
3 municipal authority for review of applications for development, review  
4 and preparation of documents, inspection of improvements or other  
5 purposes under the provisions of sections 11 through 16 of P.L.   ,  
6 c. (C.           ) (now pending before the Legislature as this bill).  
7 Such fees or charges shall be based upon a schedule established by  
8 resolution. The application review and inspection charges shall be  
9 limited only to professional charges for review of applications, review  
10 and preparation of documents and inspections of developments under  
11 construction and review by outside consultants when an application is  
12 of a nature beyond the scope of the expertise of the professionals  
13 normally utilized by the municipal authority. The only costs that shall  
14 be added to any such charges shall be actual out-of-pocket expenses  
15 of any such professionals or consultants including normal and typical  
16 expenses incurred in processing applications and inspecting  
17 improvements. The municipal authority shall not bill the applicant, or  
18 charge any escrow account or deposit authorized under subsection b.  
19 of this section, for any municipal authority clerical or administrative  
20 functions, overhead expenses, meeting room charges, or any other  
21 municipal authority costs and expenses except as provided for in this  
22 section, nor shall a municipal authority professional add any such  
23 charges to his bill. If the salary, staff support and overhead for a  
24 municipal authority professional are provided by the municipal  
25 authority, the charge shall not exceed 200% of the sum of the products  
26 resulting from multiplying (1) the hourly base salary, which shall be  
27 established annually by resolution, of each of the professionals by (2)  
28 the number of hours spent by the respective professional upon review  
29 of the application for development or inspection of the developer's  
30 improvements, as the case may be. For other professionals the charge  
31 shall be at the same rate as all other work of the same nature by the  
32 professional for the municipal authority when fees are not reimbursed  
33 or otherwise imposed on applicants or developers.

34       b. If the municipal authority requires of the developer a deposit  
35 toward anticipated municipal authority expenses for these professional  
36 services, the deposit shall be placed in an escrow account pursuant to  
37 section 1 of P.L.1985, c.316 (C.40:14B-20.1). The amount of the  
38 deposit required shall be reasonable in regard to the scale and  
39 complexity of the development. The amount of the initial deposit  
40 required shall be established by resolution. For review of applications  
41 for development proposing a subdivision, the amount of the deposit  
42 shall be calculated based on the number of proposed lots. For review  
43 of applications for development proposing a site plan, the amount of  
44 the deposit shall be based on the area of the site to be developed, or  
45 the square footage of buildings to be constructed, or both. Deposits  
46 for inspection fees shall be established in accordance with subsection

1 h. of section 11 of P.L. , c. (C. ) (now pending before the  
2 Legislature as this bill).

3 c. Each payment charged to the deposit for review of applications,  
4 review and preparation of documents and inspection of improvements  
5 shall be pursuant to a voucher from the professional, which voucher  
6 shall identify the personnel performing the service, and for each date  
7 the services performed, the hours spent to one-quarter hour  
8 increments, the hourly rate and the expenses incurred. All  
9 professionals shall submit vouchers to the chief financial officer of the  
10 municipal authority on a monthly basis in accordance with schedules  
11 and procedures established by the chief financial officer of the  
12 municipal authority. If the services are provided by a municipal  
13 authority employee, the municipal authority employee shall prepare  
14 and submit to the chief financial officer of the municipal authority a  
15 statement containing the same information as required on a voucher,  
16 on a monthly basis. The professional shall send an informational copy  
17 of all vouchers or statements submitted to the chief financial officer of  
18 the municipal authority simultaneously to the applicant. The chief  
19 financial officer of the municipal authority shall prepare and send to  
20 the applicant a statement which shall include an accounting of funds  
21 listing all deposits, interest earnings, disbursements, and the  
22 cumulative balance of the escrow account. This information shall be  
23 provided on a quarterly basis, if monthly charges are \$1,000 or less,  
24 or on a monthly basis if monthly charges exceed \$1,000. If an escrow  
25 account or deposit contains insufficient funds to enable the municipal  
26 authority to perform required application reviews or improvement  
27 inspections, the chief financial officer of the municipal authority shall  
28 provide the applicant with a notice of the insufficient escrow or  
29 deposit balance. In order for work to continue on the development or  
30 the application, the applicant shall within a reasonable time period post  
31 a deposit to the account in an amount to be agreed upon by the  
32 municipal authority and the applicant. In the interim, any required  
33 health and safety inspections shall be made and charged back against  
34 the replenishment of funds.

35 d. The following close-out procedure shall apply to all deposits and  
36 escrow accounts established under the provisions of sections 11  
37 through 16 of P.L. , c. (C. ) (now pending before the  
38 Legislature as this bill) and shall commence after the municipal  
39 authority has granted final approval and signed the subdivision plat or  
40 site plan, in the case of application review escrows and deposits, or  
41 after the improvements have been approved as provided in section 11  
42 of P.L. , c. (C. ) (now pending before the Legislature as this  
43 bill), in the case of improvement inspection escrows and deposits. The  
44 applicant shall send written notice by certified mail to the chief  
45 financial officer of the municipal authority, and to the relevant  
46 municipal authority professional, that the application or the



1 improvements, as the case may be, are completed. After receipt of  
2 such notice, the professional shall render a final bill to the chief  
3 financial officer of the municipal authority within 30 days, and shall  
4 send a copy simultaneously to the applicant. The chief financial officer  
5 of the municipal authority shall render a written final accounting to the  
6 applicant on the uses to which the deposit was put within 45 days of  
7 receipt of the final bill. Any balances remaining in the deposit or  
8 escrow account, including interest in accordance with section 1 of  
9 P.L.1985, c.316 (C.40:14B-20.1), shall be refunded to the developer  
10 along with the final accounting.

11 e. All professional charges for review of an application for  
12 development, review and preparation of documents or inspection of  
13 improvements shall be reasonable and necessary, given the status and  
14 progress of the application or construction. Review fees shall be  
15 charged only in connection with an application for development  
16 presently pending before the municipal authority or upon review of  
17 compliance with conditions of approval, or review of requests for  
18 modification or amendment made by the applicant. A professional  
19 shall not review items which are subject to approval by any State  
20 governmental agency and not under municipal authority jurisdiction  
21 except to the extent consultation with a State agency is necessary due  
22 to the effect of State approvals in the subdivision or site plan.  
23 Inspection fees shall be charged only for actual work shown on a  
24 subdivision or site plan or required by an approving resolution.  
25 Professionals inspecting improvements under construction shall charge  
26 only for inspections that are reasonably necessary to check the  
27 progress and quality of the work and such inspections shall be  
28 reasonably based on the approved development plans and documents.

29 f. If the municipal authority retains a different professional or  
30 consultant in the place of the professional originally responsible for  
31 development, application review, or inspection of improvements, the  
32 municipal authority shall be responsible for all time and expenses of  
33 the new professional to become familiar with the application or the  
34 project, and the municipal authority shall not bill the applicant or  
35 charge the deposit or the escrow account for any such services.

36  
37 13. A municipal authority shall not require that a maintenance  
38 guarantee required pursuant to section 11 of P.L. , c. (C. )  
39 (now pending before the Legislature as this bill) be in cash or that  
40 more than 10% of a performance guarantee pursuant to that section be  
41 in cash. A developer may, however, provide at his option some or all  
42 of a maintenance guarantee in cash, or more than 10% of a  
43 performance guarantee in cash.

44  
45 14. a. An applicant shall notify in writing the municipal authority  
46 with copies to the chief financial officer and the professional whenever

1 the applicant disputes the charges made by a professional for service  
2 rendered to the municipal authority in reviewing applications for  
3 development, review and preparation of documents, inspection of  
4 improvements, or other charges made pursuant to the provisions of  
5 sections 11 through 16 of P.L. , c. (C. ) (now pending  
6 before the Legislature as this bill). The municipal authority, or its  
7 designee, shall within a reasonable time period attempt to remediate  
8 any disputed charges. If the matter is not resolved to the satisfaction  
9 of the applicant, the applicant may appeal to the county construction  
10 board of appeals established under section 9 of P.L.1975, c.217  
11 (C.52:27D-127) any charge to an escrow account or a deposit by any  
12 municipal authority professional or consultant, or the cost of the  
13 installation of improvements estimated by the municipal authority  
14 engineer pursuant to section 15 of P.L. , c. (C. ) (now  
15 pending before the Legislature as this bill). An applicant or his  
16 authorized agent shall submit the appeal in writing to the county  
17 construction board of appeals. The applicant or his authorized agent  
18 shall simultaneously send a copy of the appeal to the municipal  
19 authority and any professional whose charge is the subject of the  
20 appeal. An applicant shall file an appeal within 45 days from receipt  
21 of the informational copy of the professional's voucher required by  
22 subsection c. of section 12 of P.L. , c. (C. ) (now pending  
23 before the Legislature as this bill), except that if the professional has  
24 not supplied the applicant with an informational copy of the voucher,  
25 then the applicant shall file his appeal within 60 days from receipt of  
26 the municipal authority statement of activity against the deposit or  
27 escrow account required by subsection c. of section 12 of P.L. ,  
28 c. (C. ) (now pending before the Legislature as this bill). An  
29 applicant may file an appeal for an ongoing series of charges by a  
30 professional during a period not exceeding six months to demonstrate  
31 that they represent a pattern of excessive or inaccurate charges. An  
32 applicant making use of this provision need not appeal each charge  
33 individually.

34 b. The county construction board of appeals shall hear the appeal,  
35 render a decision thereon, and file its decision with a statement of the  
36 reasons therefor with the municipal authority not later than 10 business  
37 days following the submission of the appeal, unless such period of time  
38 has been extended with the consent of the applicant. The decision may  
39 approve, disapprove, or modify the professional charges appealed  
40 from. A copy of the decision shall be forwarded by certified or  
41 registered mail to the party making the appeal, the municipal authority,  
42 and the professional involved in the appeal. Failure by the board to  
43 hear an appeal and render and file a decision thereon within the time  
44 limits prescribed in this subsection shall be deemed a denial of the  
45 appeal for purposes of a complaint, application, or appeal to a court  
46 of competent jurisdiction.

1 c. The county construction board of appeals shall provide rules for  
2 its procedure in accordance with this section. The board shall have the  
3 power to administer oaths and issue subpoenas to compel the  
4 attendance of witnesses and the production of relevant evidence, and  
5 the provisions of the "County and Municipal Investigations Law,"  
6 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

7 d. During the pendency of any appeal, the municipal authority shall  
8 continue to process, hear, and decide the application for development,  
9 and to inspect the development in the normal course, and shall not  
10 withhold, delay, or deny reviews, inspections, signing of subdivision  
11 plats or site plans, the reduction or the release of performance or  
12 maintenance guarantees, the issuance of construction permits or  
13 certificates of occupancy, or any other approval or permit because an  
14 appeal has been filed or is pending under this section. The chief  
15 financial officer of the municipal authority may pay charges out of the  
16 appropriate escrow account or deposit for which an appeal has been  
17 filed. If a charge is disallowed after payment, the chief financial  
18 officer of the municipal authority shall reimburse the deposit or escrow  
19 account in the amount of any such disallowed charge or refund the  
20 amount to the applicant. If a charge is disallowed after payment to a  
21 professional or consultant who is not an employee of the municipal  
22 authority, the professional or consultant shall reimburse the municipal  
23 authority in the amount of any such disallowed charge.

24 e. The Commissioner of Community Affairs shall promulgate rules  
25 and regulations pursuant to the "Administrative Procedure Act,"  
26 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
27 this section.

28  
29 15. The cost of the installation of improvements for the purposes  
30 of section 11 of P.L. , c. (C. ) (now pending before the  
31 Legislature as this bill) shall be estimated by the municipal authority  
32 engineer based on documented construction costs for public  
33 improvements prevailing in the general area of the municipal authority.  
34 The developer may appeal the municipal authority engineer's estimate  
35 to the county construction board of appeals established under section  
36 9 of P.L.1975, c.217 (C.52:27D-127).

37  
38 16. The municipal authority shall, for the purposes of section 11 of  
39 P.L. , c. (C. ) (now pending before the Legislature as this  
40 bill), accept a performance guarantee or maintenance guarantee which  
41 is an irrevocable letter of credit if it:

42 a. Constitutes an unconditional payment obligation of the issuer  
43 running solely to the municipal authority for an express initial period  
44 of time in the amount determined pursuant to section 11 of P.L. , c.  
45 (C. ) (now pending before the Legislature as this bill);

46 b. Is issued by a banking or savings institution authorized to do and

1 doing business in this State;

2 c. Is for a period of time of at least one year; and

3 d. Permits the municipal authority to draw upon the letter of credit  
4 if the obligor fails to furnish another letter of credit which complies  
5 with the provisions of this section 30 days or more in advance of the  
6 expiration date of the letter of credit or such longer period in advance  
7 thereof as is stated in the letter of credit.

8

9 17. This act shall take effect 90 days after enactment.

10

11

12 STATEMENT

13

14 This bill would establish procedures and standards for sewerage and  
15 municipal and county utility authorities to use in the managing and  
16 accounting of escrow accounts and performance guarantees. It also  
17 would establish procedures for appealing disputed guarantee estimates  
18 and escrow charges. Existing law does not provide procedural  
19 guidelines for the use of escrow accounts and performance guarantees  
20 for sewerage and municipal and county utility authorities. The  
21 sponsor believes that such a procedural framework is needed. Since  
22 an accepted procedural framework already exists in the "Municipal  
23 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and sewerage  
24 and municipal and county utility authorities are created by  
25 municipalities and counties, this same procedural framework is used  
26 in this bill.

ASSEMBLY LOCAL GOVERNMENT AND HOUSING  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 511**

with committee amendments

**STATE OF NEW JERSEY**

DATED: AUGUST 14, 1998

The Assembly Local Government and Housing Committee reports favorably, with committee amendments, Assembly Bill No. 511.

This bill, as amended, would establish procedures and standards for sewerage and municipal and county utility authorities to use in the managing and accounting of escrow accounts and performance guarantees. It also would establish procedures for appealing disputed guarantee estimates and escrow charges. Existing law does not provide procedural guidelines for the use of escrow accounts and performance guarantees for sewerage and municipal and county utility authorities. The committee believes that such a procedural framework is needed. Since an accepted procedural framework already exists in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and sewerage and municipal and county utility authorities are created by municipalities and counties, this same procedural framework is used in this bill.

The committee amended the bill, upon the recommendations of the New Jersey Builder's Association, the Association of Environmental Authorities, the Society of Municipal Engineers, and the Department of Community Affairs: to permit a developer's engineer to prepare itemized cost estimates of improvements, upon the approval of the authority engineer; to remove the specific requirement that the authority engineer inspect and report on improvements; change the amount of the performance guarantee to secure completion or correction of unapproved improvements from 30% to an amount equal to the remaining open improvements; change set percentages of amounts a developer is required to deposit with the authority for inspection fees to the full amount of reasonably anticipated inspection fees, except that for a large project being constructed in phases, only the amount of reasonably anticipated inspection fees for each phase is required to be deposited.

The committee amendments also define the position of finance officer of an authority and permit an authority to establish the amount of an initial deposit required of a developer for professional services

to be set by the rules and regulations of the authority or by a resolution. A later resolution would supersede an amount set by rules and regulations. When an applicant disputes charges for professional services made in the review of an application, the committee amendments require that the disputed charges shall be specifically outlined in correspondence, including the dates, times, and personnel in dispute.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 511**

# **STATE OF NEW JERSEY**

DATED: OCTOBER 19, 1998

The Senate Community and Urban Affairs Committee reports favorably Assembly Bill No. 511 (1R).

Assembly Bill 511 (1R) would establish procedures and standards for sewerage and municipal and county utility authorities to use in the managing and accounting of escrow accounts and performance guarantees. It also would establish procedures for appealing disputed guarantee estimates and escrow charges. Existing law does not provide procedural guidelines for the use of escrow accounts and performance guarantees for sewerage and municipal and county utility authorities. Since a procedural framework already exists in the "Municipal Land Use Law," P.L. 1975, c.291 (C.40:55D-1 et seq.), and sewerage and municipal and county utility authorities are created by municipalities and counties, this same procedural framework is used in this bill.

Like the analogous MLUL provisions, this bill would authorize sewerage and municipal and county utility authorities to require and accept performance guarantees in an amount not to exceed 120 percent of the cost of installation, which cost shall be determined or approved by the sewerage authority engineer according to the method of calculation set forth in the bill, for improvements which the sewerage authority deems necessary. The sewerage authority engineer is required to prepare an itemized cost estimate of the improvements covered by the performance guarantee or approve an itemized estimate of the improvements as prepared by the developer's engineer.

The estimate of the cost of installation of improvements is to be based on documented construction costs for public improvements prevailing in the general area of the sewerage authority. Any estimate prepared by the applicant's engineer is subject to the approval of the sewerage authority engineer and, as under the MLUL, the developer is authorized to appeal the sewerage authority engineer's estimate or decision to the county construction board of appeals.

Similarly, the bill authorizes these authorities to accept maintenance guarantees in an amount not to exceed 15 percent of the cost of the improvement, determined in the same way as performance guarantees, which is described above.

The bill sets forth a procedure to govern how the escrow moneys are reimbursed upon substantial completion of all required utility improvements and their connection to the public system. In that case, the obligor may request of the appropriate authority, in writing, that the authority prepare, in accordance with the itemized cost estimate prepared or approved by the authority engineer, a list of all uncompleted or unsatisfactory completed improvements. The list shall state in detail the nature and extent of any incomplete or unsatisfactory improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed improvement determined to be unsatisfactory. The authority is required to recommend the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvements in accordance with the itemized cost estimated prepared or approved by the authority engineer.

The authority, by resolution, shall either approve the improvements determined to be complete and satisfactory by the authority or reject any or all of these improvements upon the establishment of cause for rejection. The bill sets forth sanctions in case the authority fails to send or provide the list and report within 45 days from receipt of the request. The bill also specifies what happens if the obligor has made a cash deposit as part of the performance guarantee.

Not only does the procedure govern withholding of performance and maintenance guarantees, but also addresses the amount of inspection fees which may be paid, which is the greater of \$500 or 5% of the cost of improvements, except under extraordinary circumstances. The developer is required to deposit with the authority the full amount of reasonably anticipated inspection fees unless the section of the development under construction is of a large size and the infrastructure is to be constructed in phases.

The bill governs the payment to professionals for services rendered based upon a schedule established by resolution. The bill also specifies which professional activities may be charged for.

Finally, the bill establishes a detailed procedure for closing out deposits and escrow accounts. Any balances remaining in the deposit or escrow accounts, including interest, are to be refunded to the developer along with the final accounting. The bill sets forth an appeal procedure in the event that disputes arise, utilizing the county construction board of appeals as the forum for dispute resolution and thereby following the model which currently exists for resolving disputes over performance and maintenance guarantees under the MLUL.

This bill is identical to Senate Bill No. 667 with committee amendments also reported by the committee on October 19, 1998.



**SENATE, No. 667**

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

INTRODUCED FEBRUARY 23, 1998

**Sponsored by:**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Creates standards for certain sewerage and municipal and county utility authorities' escrow accounts.

**CURRENT VERSION OF TEXT**

As introduced.



S667 INVERSO

1 AN ACT concerning certain sewerage and municipal authorities'  
2 escrow accounts, and supplementing P.L.1946, c.138 (C.40:14A-1  
3 et seq.) and P.L.1957, c.183 (C.40:14B-1 et seq.).  
4

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

8 1. The Legislature hereby finds and declares that:

9 a. It is necessary for the protection of the public health and safety  
10 that sewerage authorities review and approve plans for utility  
11 improvements which developers will convey to sewerage authorities  
12 or which will serve more than one user or service unit;

13 b. Sewerage authorities have frequently required developers who  
14 will be installing utility improvements to post large sums of money  
15 early in the application process, long before the commencement of  
16 construction;

17 c. Changes in the operation and lending procedures of financial  
18 institutions have significantly restricted the amount of financing  
19 available for development activities prior to the initiation of  
20 construction;

21 d. It is in the public interest to improve regulatory efficiency  
22 through standardized sewerage authority procedures;

23 e. The public interest is best served through the use of standardized  
24 procedures to govern the approval and installation of utility  
25 improvements which are consistent with and follow the accepted  
26 procedures established in the "Municipal Land Use Law," P.L.1975,  
27 c.291 (C.40:55D-1 et seq.).  
28

29 2. As used in sections 3 through 8 of P.L. , c. (C. )  
30 (now pending before the Legislature as this bill), "developer" means  
31 the legal or beneficial owner or owners of a lot or of any land  
32 proposed to be included in a proposed development, including the  
33 holder of an option or contract to purchase, or other person having an  
34 enforceable proprietary interest in such land, and who is submitting an  
35 application for the installation of utility improvements pursuant to  
36 P.L. , c. (C. ) (now pending before the Legislature as this  
37 bill).  
38

39 3. a. Before recording of final subdivision plats or as a condition  
40 of final site plan approval, the sewerage authority may require and  
41 shall accept in accordance with the standards adopted pursuant to  
42 sections 3 through 8 of P.L. , c. (C. ) (now pending before  
43 the Legislature as this bill) for the purpose of assuring the installation  
44 and maintenance of on-tract sewer facility improvements:

45 (1) The furnishing of a performance guarantee in favor of the  
46 sewerage authority in an amount not to exceed 120% of the cost of

1 installation, which cost shall be determined by the sewerage authority  
2 engineer according to the method of calculation set forth in section 7  
3 of P.L. , c. (C. ) (now pending before the Legislature as  
4 this bill), for improvements which the sewerage authority may deem  
5 necessary or appropriate including sanitary sewers and related sewer  
6 facilities and improvements.

7 The sewerage authority engineer shall prepare an itemized cost  
8 estimate of the improvements covered by the performance guarantee,  
9 which itemized cost estimate shall be appended to each performance  
10 guarantee posted by the obligor.

11 (2) The furnishing of a maintenance guarantee to be posted with  
12 the sewerage authority for a period not to exceed two years after final  
13 acceptance of the improvement, in an amount not to exceed 15% of  
14 the cost of the improvement, which cost shall be determined by the  
15 sewerage authority engineer according to the method of calculation set  
16 forth in section 7 of P.L. , c. (C. ) (now pending before the  
17 Legislature as this bill). In the event that other governmental agencies  
18 or public utilities automatically will own the utilities to be installed or  
19 the improvements are covered by a performance or maintenance  
20 guarantee to another governmental agency, no performance or  
21 maintenance guarantee, as the case may be, shall be required by the  
22 sewerage authority for such utilities or improvements.

23 b. The time allowed for installation of the improvements for which  
24 the performance guarantee has been provided may be extended by the  
25 sewerage authority by resolution. As a condition or as part of any  
26 such extension, the amount of any performance guarantee shall be  
27 increased or reduced, as the case may be, to an amount not to exceed  
28 120% of the cost of the installation, which cost shall be determined by  
29 the sewerage authority engineer according to the method of  
30 calculation set forth in section 7 of P.L. , c. (C. ) (now  
31 pending before the Legislature as this bill) as of the time of the  
32 passage of the resolution.

33 c. If the required improvements are not completed or corrected in  
34 accordance with the performance guarantee, the obligor and surety, if  
35 any, shall be liable thereon to the sewerage authority for the  
36 reasonable cost of the improvements not completed or corrected and  
37 the sewerage authority may either prior to or after the receipt of the  
38 proceeds thereof complete such improvements. Such completion or  
39 correction of improvements shall be subject to the public bidding  
40 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
41 (C.40A:11-1 et seq.).

42 d. (1) Upon substantial completion of all required utility  
43 improvements, and the connection of same to the public system, the  
44 obligor may request of the sewerage authority in writing, by certified  
45 mail addressed in care of the chairman of the sewerage authority, that  
46 the sewerage authority engineer prepare, in accordance with the

1 itemized cost estimate prepared by the sewerage authority engineer  
2 and appended to the performance guarantee pursuant to subsection a.  
3 of this section, a list of all uncompleted or unsatisfactory completed  
4 improvements. If such a request is made, the obligor shall send a copy  
5 of the request to the sewerage authority engineer. The request shall  
6 indicate which improvements have been completed and which  
7 improvements remain uncompleted in the judgment of the obligor.  
8 Thereupon the sewerage authority engineer shall inspect all  
9 improvements covered by obligor's request and shall file a detailed list  
10 and report, in writing, with the sewerage authority, and shall  
11 simultaneously send a copy thereof to the obligor not later than 45  
12 days after receipt of the obligor's request.

13 (2) The list prepared by the sewerage authority engineer shall state,  
14 in detail, with respect to each improvement determined to be  
15 incomplete or unsatisfactory, the nature and extent of the  
16 incompleteness of each incomplete improvement or the nature and  
17 extent of, and remedy for, the unsatisfactory state of each completed  
18 improvement determined to be unsatisfactory. The report prepared by  
19 the sewerage authority engineer shall identify each improvement  
20 determined to be complete and satisfactory together with a  
21 recommendation as to the amount of reduction to be made in the  
22 performance guarantee relating to the completed and satisfactory  
23 improvements, in accordance with the itemized cost estimate prepared  
24 by the sewerage authority engineer and appended to the performance  
25 guarantee pursuant to subsection a. of this section.

26 e. (1) The sewerage authority, by resolution, shall either approve  
27 the improvements determined to be complete and satisfactory by the  
28 sewerage authority engineer, or reject any or all of these improvements  
29 upon the establishment in the resolution of cause for rejection, and  
30 shall approve and authorize the amount of reduction to be made in the  
31 performance guarantee relating to the improvements accepted, in  
32 accordance with the itemized cost estimate prepared by the sewerage  
33 authority engineer and appended to the performance guarantee  
34 pursuant to subsection a. of this section. This resolution shall be  
35 adopted not later than 45 days after receipt of the list and report  
36 prepared by the sewerage authority engineer. Upon adoption of the  
37 resolution by the sewerage authority, the obligor shall be released from  
38 all liability pursuant to its performance guarantee, with respect to  
39 those approved improvements except for that portion adequately  
40 sufficient to secure completion or correction of the improvements not  
41 yet approved; provided that 30% of the amount of the performance  
42 guarantee posted may be retained to ensure completion and  
43 acceptability of all improvements.

44 (2) If the sewerage authority engineer fails to send or provide the  
45 list and report as requested by the obligor pursuant to subsection d. of  
46 this section within 45 days from receipt of the request, the obligor may

1 apply to the court in a summary manner for an order compelling the  
2 sewerage authority engineer to provide the list and report within a  
3 stated time and the cost of applying to the court, including reasonable  
4 attorney's fees, may be awarded to the prevailing party.

5 If the sewerage authority fails to approve or reject the  
6 improvements determined by the sewerage authority engineer to be  
7 complete and satisfactory or reduce the performance guarantee for the  
8 complete and satisfactory improvements within 45 days from the  
9 receipt of the sewerage authority engineer's list and report, the obligor  
10 may apply to the court in a summary manner for an order compelling,  
11 within a stated time, approval of the complete and satisfactory  
12 improvements and approval of a reduction in the performance  
13 guarantee for the approvable complete and satisfactory improvements  
14 in accordance with the itemized cost estimate prepared by the  
15 sewerage authority engineer and appended to the performance  
16 guarantee pursuant to subsection a. of this section; and the cost of  
17 applying to the court, including reasonable attorney's fees, may be  
18 awarded to the prevailing party.

19 (3) In the event that the obligor has made a cash deposit with the  
20 sewerage authority as part of the performance guarantee, then any  
21 partial reduction granted in the performance guarantee pursuant to this  
22 subsection shall be applied to the cash deposit in the same proportion  
23 as the original cash deposit bears to the full amount of the  
24 performance guarantee.

25 f. If any portion of the required improvements is rejected, the  
26 sewerage authority may require the obligor to complete or correct  
27 such improvements and, upon completion or correction, the same  
28 procedure of notification, as set forth in this section shall be followed.

29 g. Nothing herein, however, shall be construed to limit the right of  
30 the obligor to contest by legal proceedings any determination of the  
31 sewerage authority or the sewerage authority engineer.

32 h. The obligor shall reimburse the sewerage authority for all  
33 reasonable inspection fees paid to the sewerage authority engineer for  
34 the foregoing inspection of improvements; provided that the sewerage  
35 authority may require of the developer a deposit for the inspection fees  
36 in an amount not to exceed, except for extraordinary circumstances,  
37 the greater of \$500 or 5% of the cost of improvements, which cost  
38 shall be determined pursuant to section 7 of P.L. , c. (C. )  
39 (now pending before the Legislature as this bill). For those  
40 developments for which the reasonably anticipated fees are less than  
41 \$10,000, fees may, at the option of the developer, be paid in two  
42 installments. The initial amount deposited by a developer shall be 50%  
43 of the reasonably anticipated fees. When the balance on deposit drops  
44 to 10% of the reasonably anticipated fees because the amount  
45 deposited by the developer has been reduced by the amount paid to the  
46 sewerage authority engineer for inspection, the developer shall deposit

1 the remaining 50% of the anticipated inspection fees. For those  
2 developments for which the reasonably anticipated fees are \$10,000 or  
3 greater, fees may, at the option of the developer, be paid in four  
4 installments. The initial amount deposited by a developer shall be 25%  
5 of the reasonably anticipated fees. When the balance on deposit drops  
6 to 10% of the reasonably anticipated fees because the amount  
7 deposited by the developer has been reduced by the amount paid to the  
8 sewerage authority engineer for inspection, the developer shall make  
9 additional deposits of 25% of the reasonably anticipated fees. The  
10 sewerage authority engineer shall not perform any inspection if  
11 sufficient funds to pay for those inspections are not on deposit.

12 i. In the event that final approval is by stages or sections of  
13 development, the provisions of this section shall be applied by stage or  
14 section.

15 j. To the extent that any of the improvements have been dedicated  
16 to the sewerage authority on the subdivision plat or site plan, the  
17 sewerage authority shall be deemed, upon the release of any  
18 performance guarantee required pursuant to subsection a. of this  
19 section, to accept dedication for public use of sewer facilities and any  
20 other improvements made thereon according to site plans and  
21 subdivision plats approved by the sewerage authority, provided that  
22 such improvements have been inspected and have received final  
23 approval by the sewerage authority engineer.

24

25 4. a. The chief financial officer of a sewerage authority shall make  
26 all of the payments to professionals for services rendered to the  
27 sewerage authority for review of applications for development, review  
28 and preparation of documents, inspection of improvements or other  
29 purposes under the provisions of sections 3 through 8 of P.L. , c.  
30 (C. ) (now pending before the Legislature as this bill). Such  
31 fees or charges shall be based upon a schedule established by  
32 resolution. The application review and inspection charges shall be  
33 limited only to professional charges for review of applications, review  
34 and preparation of documents and inspections of developments under  
35 construction and review by outside consultants when an application is  
36 of a nature beyond the scope of the expertise of the professionals  
37 normally utilized by the sewerage authority. The only costs that shall  
38 be added to any such charges shall be actual out-of-pocket expenses  
39 of any such professionals or consultants including normal and typical  
40 expenses incurred in processing applications and inspecting  
41 improvements. The sewerage authority shall not bill the applicant, or  
42 charge any escrow account or deposit authorized under subsection b.  
43 of this section, for any sewerage authority clerical or administrative  
44 functions, overhead expenses, meeting room charges, or any other  
45 sewerage authority costs and expenses except as provided for in this  
46 section, nor shall a sewerage authority professional add any such

1 charges to his bill. If the salary, staff support and overhead for a  
2 sewerage authority professional are provided by the sewerage  
3 authority, the charge shall not exceed 200% of the sum of the products  
4 resulting from multiplying (1) the hourly base salary, which shall be  
5 established annually by resolution, of each of the professionals by (2)  
6 the number of hours spent by the respective professional upon review  
7 of the application for development or inspection of the developer's  
8 improvements, as the case may be. For other professionals the charge  
9 shall be at the same rate as all other work of the same nature by the  
10 professional for the sewerage authority when fees are not reimbursed  
11 or otherwise imposed on applicants or developers.

12 b. If the sewerage authority requires of the developer a deposit  
13 toward anticipated sewerage authority expenses for these professional  
14 services, the deposit shall be placed in an escrow account pursuant to  
15 section 1 of P.L.1985, c.314 (C.40:14A-7.3). The amount of the  
16 deposit required shall be reasonable in regard to the scale and  
17 complexity of the development. The amount of the initial deposit  
18 required shall be established by resolution. For review of applications  
19 for development proposing a subdivision, the amount of the deposit  
20 shall be calculated based on the number of proposed lots. For review  
21 of applications for development proposing a site plan, the amount of  
22 the deposit shall be based on the area of the site to be developed, or  
23 the square footage of buildings to be constructed, or both. Deposits  
24 for inspection fees shall be established in accordance with subsection  
25 h. of section 3 of P.L. , c. (C. ) (now pending before the  
26 Legislature as this bill).

27 c. Each payment charged to the deposit for review of applications,  
28 review and preparation of documents and inspection of improvements  
29 shall be pursuant to a voucher from the professional, which voucher  
30 shall identify the personnel performing the service, and for each date  
31 the services performed, the hours spent to one-quarter hour  
32 increments, the hourly rate and the expenses incurred. All  
33 professionals shall submit vouchers to the chief financial officer of the  
34 sewerage authority on a monthly basis in accordance with schedules  
35 and procedures established by the chief financial officer of the  
36 sewerage authority. If the services are provided by a sewerage  
37 authority employee, the sewerage authority employee shall prepare and  
38 submit to the chief financial officer of the sewerage authority a  
39 statement containing the same information as required on a voucher,  
40 on a monthly basis. The professional shall send an informational copy  
41 of all vouchers or statements submitted to the chief financial officer of  
42 the sewerage authority simultaneously to the applicant. The chief  
43 financial officer of the sewerage authority shall prepare and send to the  
44 applicant a statement which shall include an accounting of funds listing  
45 all deposits, interest earnings, disbursements, and the cumulative  
46 balance of the escrow account. This information shall be provided on

1 a quarterly basis, if monthly charges are \$1,000 or less, or on a  
2 monthly basis if monthly charges exceed \$1,000. If an escrow account  
3 or deposit contains insufficient funds to enable the sewerage authority  
4 to perform required application reviews or improvement inspections,  
5 the chief financial officer of the sewerage authority shall provide the  
6 applicant with a notice of the insufficient escrow or deposit balance.  
7 In order for work to continue on the development or the application,  
8 the applicant shall within a reasonable time period post a deposit to the  
9 account in an amount to be agreed upon by the sewerage authority and  
10 the applicant. In the interim, any required health and safety  
11 inspections shall be made and charged back against the replenishment  
12 of funds.

13 d. The following close-out procedure shall apply to all deposits and  
14 escrow accounts established under the provisions of sections 3 through  
15 8 of P.L. , c. (C. ) (now pending before the Legislature as  
16 this bill) and shall commence after the sewerage authority has granted  
17 final approval and signed the subdivision plat or site plan, in the case  
18 of application review escrows and deposits, or after the improvements  
19 have been approved as provided in section 3 of P.L. , c. (C. )  
20 (now pending before the Legislature as this bill), in the case of  
21 improvement inspection escrows and deposits. The applicant shall  
22 send written notice by certified mail to the chief financial officer of the  
23 sewerage authority, and to the relevant sewerage authority  
24 professional, that the application or the improvements, as the case may  
25 be, are completed. After receipt of such notice, the professional shall  
26 render a final bill to the chief financial officer of the sewerage  
27 authority within 30 days, and shall send a copy simultaneously to the  
28 applicant. The chief financial officer of the sewerage authority shall  
29 render a written final accounting to the applicant on the uses to which  
30 the deposit was put within 45 days of receipt of the final bill. Any  
31 balances remaining in the deposit or escrow account, including interest  
32 in accordance with section 1 of P.L.1985, c.314 (C.40:14A-7.3), shall  
33 be refunded to the developer along with the final accounting.

34 e. All professional charges for review of an application for  
35 development, review and preparation of documents or inspection of  
36 improvements shall be reasonable and necessary, given the status and  
37 progress of the application or construction. Review fees shall be  
38 charged only in connection with an application for development  
39 presently pending before the sewerage authority or upon review of  
40 compliance with conditions of approval, or review of requests for  
41 modification or amendment made by the applicant. A professional  
42 shall not review items which are subject to approval by any State  
43 governmental agency and not under sewerage authority jurisdiction  
44 except to the extent consultation with a State agency is necessary due  
45 to the effect of State approvals in the subdivision or site plan.  
46 Inspection fees shall be charged only for actual work shown on a



1 subdivision or site plan or required by an approving resolution.  
2 Professionals inspecting improvements under construction shall charge  
3 only for inspections that are reasonably necessary to check the  
4 progress and quality of the work and such inspections shall be  
5 reasonably based on the approved development plans and documents.

6 f. If the sewerage authority retains a different professional or  
7 consultant in the place of the professional originally responsible for  
8 development, application review, or inspection of improvements, the  
9 sewerage authority shall be responsible for all time and expenses of the  
10 new professional to become familiar with the application or the  
11 project, and the sewerage authority shall not bill the applicant or  
12 charge the deposit or the escrow account for any such services.

13

14 5. A sewerage authority shall not require that a maintenance  
15 guarantee required pursuant to section 3 of P.L. , c. (C. )  
16 (now pending before the Legislature as this bill) be in cash or that  
17 more than 10% of a performance guarantee pursuant to that section be  
18 in cash. A developer may, however, provide at his option some or all  
19 of a maintenance guarantee in cash, or more than 10% of a  
20 performance guarantee in cash.

21

22 6. a. An applicant shall notify in writing the sewerage authority  
23 with copies to the chief financial officer and the professional whenever  
24 the applicant disputes the charges made by a professional for service  
25 rendered to the sewerage authority in reviewing applications for  
26 development, review and preparation of documents, inspection of  
27 improvements, or other charges made pursuant to the provisions of  
28 sections 3 through 8 of P.L. , c. (C. ) (now pending before  
29 the Legislature as this bill). The sewerage authority, or its designee,  
30 shall within a reasonable time period attempt to remediate any  
31 disputed charges. If the matter is not resolved to the satisfaction of  
32 the applicant, the applicant may appeal to the county construction  
33 board of appeals established under section 9 of P.L.1975, c.217  
34 (C.52:27D-127) any charge to an escrow account or a deposit by any  
35 sewerage authority professional or consultant, or the cost of the  
36 installation of improvements estimated by the sewerage authority  
37 engineer pursuant to section 7 of P.L. , c. (C. ) (now  
38 pending before the Legislature as this bill). An applicant or his  
39 authorized agent shall submit the appeal in writing to the county  
40 construction board of appeals. The applicant or his authorized agent  
41 shall simultaneously send a copy of the appeal to the sewerage  
42 authority and any professional whose charge is the subject of the  
43 appeal. An applicant shall file an appeal within 45 days from receipt  
44 of the informational copy of the professional's voucher required by  
45 subsection c. of section 4 of P.L. , c. (C. ) (now pending  
46 before the Legislature as this bill), except that if the professional has

1 not supplied the applicant with an informational copy of the voucher,  
2 then the applicant shall file his appeal within 60 days from receipt of  
3 the sewerage authority statement of activity against the deposit or  
4 escrow account required by subsection c. of section 4 of P.L. , c.  
5 (C. ) (now pending before the Legislature as this bill). An  
6 applicant may file an appeal for an ongoing series of charges by a  
7 professional during a period not exceeding six months to demonstrate  
8 that they represent a pattern of excessive or inaccurate charges. An  
9 applicant making use of this provision need not appeal each charge  
10 individually.

11 b. The county construction board of appeals shall hear the appeal,  
12 render a decision thereon, and file its decision with a statement of the  
13 reasons therefor with the sewerage authority not later than 10 business  
14 days following the submission of the appeal, unless such period of time  
15 has been extended with the consent of the applicant. The decision may  
16 approve, disapprove, or modify the professional charges appealed  
17 from. A copy of the decision shall be forwarded by certified or  
18 registered mail to the party making the appeal, the sewerage authority,  
19 and the professional involved in the appeal. Failure by the board to  
20 hear an appeal and render and file a decision thereon within the time  
21 limits prescribed in this subsection shall be deemed a denial of the  
22 appeal for purposes of a complaint, application, or appeal to a court  
23 of competent jurisdiction.

24 c. The county construction board of appeals shall provide rules for  
25 its procedure in accordance with this section. The board shall have the  
26 power to administer oaths and issue subpoenas to compel the  
27 attendance of witnesses and the production of relevant evidence, and  
28 the provisions of the "County and Municipal Investigations Law,"  
29 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

30 d. During the pendency of any appeal, the sewerage authority shall  
31 continue to process, hear, and decide the application for development,  
32 and to inspect the development in the normal course, and shall not  
33 withhold, delay, or deny reviews, inspections, signing of subdivision  
34 plats or site plans, the reduction or the release of performance or  
35 maintenance guarantees, the issuance of construction permits or  
36 certificates of occupancy, or any other approval or permit because an  
37 appeal has been filed or is pending under this section. The chief  
38 financial officer of the sewerage authority may pay charges out of the  
39 appropriate escrow account or deposit for which an appeal has been  
40 filed. If a charge is disallowed after payment, the chief financial  
41 officer of the sewerage authority shall reimburse the deposit or escrow  
42 account in the amount of any such disallowed charge or refund the  
43 amount to the applicant. If a charge is disallowed after payment to a  
44 professional or consultant who is not an employee of the sewerage  
45 authority, the professional or consultant shall reimburse the sewerage  
46 authority in the amount of any such disallowed charge.

1 e. The Commissioner of Community Affairs shall promulgate rules  
2 and regulations pursuant to the "Administrative Procedure Act,"  
3 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
4 this section.

5  
6 7. The cost of the installation of improvements for the purposes of  
7 section 3 of P.L. , c. (C. ) (now pending before the  
8 Legislature as this bill) shall be estimated by the sewerage authority  
9 engineer based on documented construction costs for public  
10 improvements prevailing in the general area of the sewerage authority.  
11 The developer may appeal the sewerage authority engineer's estimate  
12 to the county construction board of appeals established under section  
13 9 of P.L.1975, c.217 (C.52:27D-127).

14  
15 8. The sewerage authority shall, for the purposes of section 3 of  
16 P.L. , c. (C. ) (now pending before the Legislature as this  
17 bill), accept a performance guarantee or maintenance guarantee which  
18 is an irrevocable letter of credit if it:

19 a. Constitutes an unconditional payment obligation of the issuer  
20 running solely to the sewerage authority for an express initial period  
21 of time in the amount determined pursuant to section 3 of P.L. , c.  
22 (C. ) (now pending before the Legislature as this bill);

23 b. Is issued by a banking or savings institution authorized to do and  
24 doing business in this State;

25 c. Is for a period of time of at least one year; and

26 d. Permits the sewerage authority to draw upon the letter of credit  
27 if the obligor fails to furnish another letter of credit which complies  
28 with the provisions of this section 30 days or more in advance of the  
29 expiration date of the letter of credit or such longer period in advance  
30 thereof as is stated in the letter of credit.

31  
32 9. The Legislature hereby finds and declares that:

33 a. It is necessary for the protection of the public health and safety  
34 that municipal authorities review and approve plans for utility  
35 improvements which developers will convey to municipal authorities  
36 or which will serve more than one user or service unit;

37 b. Municipal authorities have frequently required developers who  
38 will be installing utility improvements to post large sums of money  
39 early in the application process, long before the commencement of  
40 construction;

41 c. Changes in the operation and lending procedures of financial  
42 institutions have significantly restricted the amount of financing  
43 available for development activities prior to the initiation of  
44 construction;

45 d. It is in the public interest to improve regulatory efficiency  
46 through standardized municipal authority procedures;

1 e. The public interest is best served through the use of standardized  
2 procedures to govern the approval and installation of utility  
3 improvements which are consistent with and follow the accepted  
4 procedures established in the "Municipal Land Use Law," P.L.1975,  
5 c.291 (C.40:55D-1 et seq.).

6  
7 10. As used in sections 11 through 16 of P.L. , c. (C. )  
8 (now pending before the Legislature as this bill), "developer" means  
9 the legal or beneficial owner or owners of a lot or of any land  
10 proposed to be included in a proposed development, including the  
11 holder of an option or contract to purchase, or other person having an  
12 enforceable proprietary interest in such land, and who is submitting an  
13 application for the installation of utility improvements pursuant to  
14 P.L. , c. (C. ) (now pending before the Legislature as this  
15 bill).

16  
17 11. a. Before recording of final subdivision plats or as a condition  
18 of final site plan approval, the municipal authority may require and  
19 shall accept in accordance with the standards adopted pursuant to  
20 sections 11 through 16 of P.L. , c. (C. ) (now pending  
21 before the Legislature as this bill) for the purpose of assuring the  
22 installation and maintenance of on-tract utility improvements:

23 (1) The furnishing of a performance guarantee in favor of the  
24 municipal authority in an amount not to exceed 120% of the cost of  
25 installation, which cost shall be determined by the municipal authority  
26 engineer according to the method of calculation set forth in section 15  
27 of P.L. , c. (C. ) (now pending before the Legislature as  
28 this bill), for improvements which the municipal authority may deem  
29 necessary or appropriate including sanitary sewers and related utility  
30 facilities and improvements.

31 The municipal authority engineer shall prepare an itemized cost  
32 estimate of the improvements covered by the performance guarantee,  
33 which itemized cost estimate shall be appended to each performance  
34 guarantee posted by the obligor.

35 (2) The furnishing of a maintenance guarantee to be posted with  
36 the municipal authority for a period not to exceed two years after final  
37 acceptance of the improvement, in an amount not to exceed 15% of  
38 the cost of the improvement, which cost shall be determined by the  
39 municipal authority engineer according to the method of calculation  
40 set forth in section 15 of P.L. , c. (C. ) (now pending  
41 before the Legislature as this bill). In the event that other  
42 governmental agencies or public utilities automatically will own the  
43 utilities to be installed or the improvements are covered by a  
44 performance or maintenance guarantee to another governmental  
45 agency, no performance or maintenance guarantee, as the case may be,  
46 shall be required by the municipal authority for such utilities or

1 improvements.

2 b. The time allowed for installation of the improvements for which  
3 the performance guarantee has been provided may be extended by the  
4 municipal authority by resolution. As a condition or as part of any  
5 such extension, the amount of any performance guarantee shall be  
6 increased or reduced, as the case may be, to an amount not to exceed  
7 120% of the cost of the installation, which cost shall be determined by  
8 the municipal authority engineer according to the method of  
9 calculation set forth in section 15 of P.L. , c. (C. ) (now  
10 pending before the Legislature as this bill) as of the time of the  
11 passage of the resolution.

12 c. If the required improvements are not completed or corrected in  
13 accordance with the performance guarantee, the obligor and surety, if  
14 any, shall be liable thereon to the municipal authority for the  
15 reasonable cost of the improvements not completed or corrected and  
16 the municipal authority may either prior to or after the receipt of the  
17 proceeds thereof complete such improvements. Such completion or  
18 correction of improvements shall be subject to the public bidding  
19 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
20 (C.40A:11-1 et seq.).

21 d. (1) Upon substantial completion of all required utility  
22 improvements, and the connection of same to the public system, the  
23 obligor may request of the municipal authority in writing, by certified  
24 mail addressed in care of the chairman of the municipal authority, that  
25 the municipal authority engineer prepare, in accordance with the  
26 itemized cost estimate prepared by the municipal authority engineer  
27 and appended to the performance guarantee pursuant to subsection a.  
28 of this section, a list of all uncompleted or unsatisfactory completed  
29 improvements. If such a request is made, the obligor shall send a copy  
30 of the request to the municipal authority engineer. The request shall  
31 indicate which improvements have been completed and which  
32 improvements remain uncompleted in the judgment of the obligor.  
33 Thereupon the municipal authority engineer shall inspect all  
34 improvements covered by obligor's request and shall file a detailed list  
35 and report, in writing, with the municipal authority, and shall  
36 simultaneously send a copy thereof to the obligor not later than 45  
37 days after receipt of the obligor's request.

38 (2) The list prepared by the municipal authority engineer shall  
39 state, in detail, with respect to each improvement determined to be  
40 incomplete or unsatisfactory, the nature and extent of the  
41 incompleteness of each incomplete improvement or the nature and  
42 extent of, and remedy for, the unsatisfactory state of each completed  
43 improvement determined to be unsatisfactory. The report prepared by  
44 the municipal authority engineer shall identify each improvement  
45 determined to be complete and satisfactory together with a  
46 recommendation as to the amount of reduction to be made in the

1 performance guarantee relating to the completed and satisfactory  
2 improvements, in accordance with the itemized cost estimate prepared  
3 by the municipal authority engineer and appended to the performance  
4 guarantee pursuant to subsection a. of this section.

5 e. (1) The municipal authority, by resolution, shall either approve  
6 the improvements determined to be complete and satisfactory by the  
7 municipal authority engineer, or reject any or all of these  
8 improvements upon the establishment in the resolution of cause for  
9 rejection, and shall approve and authorize the amount of reduction to  
10 be made in the performance guarantee relating to the improvements  
11 accepted, in accordance with the itemized cost estimate prepared by  
12 the municipal authority engineer and appended to the performance  
13 guarantee pursuant to subsection a. of this section. This resolution  
14 shall be adopted not later than 45 days after receipt of the list and  
15 report prepared by the municipal authority engineer. Upon adoption  
16 of the resolution by the municipal authority, the obligor shall be  
17 released from all liability pursuant to its performance guarantee, with  
18 respect to those approved improvements except for that portion  
19 adequately sufficient to secure completion or correction of the  
20 improvements not yet approved; provided that 30% of the amount of  
21 the performance guarantee posted may be retained to ensure  
22 completion and acceptability of all improvements.

23 (2) If the municipal authority engineer fails to send or provide the  
24 list and report as requested by the obligor pursuant to subsection d. of  
25 this section within 45 days from receipt of the request, the obligor may  
26 apply to the court in a summary manner for an order compelling the  
27 municipal authority engineer to provide the list and report within a  
28 stated time and the cost of applying to the court, including reasonable  
29 attorney's fees, may be awarded to the prevailing party.

30 If the municipal authority fails to approve or reject the  
31 improvements determined by the municipal authority engineer to be  
32 complete and satisfactory or reduce the performance guarantee for the  
33 complete and satisfactory improvements within 45 days from the  
34 receipt of the municipal authority engineer's list and report, the obligor  
35 may apply to the court in a summary manner for an order compelling,  
36 within a stated time, approval of the complete and satisfactory  
37 improvements and approval of a reduction in the performance  
38 guarantee for the approvable complete and satisfactory improvements  
39 in accordance with the itemized cost estimate prepared by the  
40 municipal authority engineer and appended to the performance  
41 guarantee pursuant to subsection a. of this section; and the cost of  
42 applying to the court, including reasonable attorney's fees, may be  
43 awarded to the prevailing party.

44 (3) In the event that the obligor has made a cash deposit with the  
45 municipal authority as part of the performance guarantee, then any  
46 partial reduction granted in the performance guarantee pursuant to this

1 subsection shall be applied to the cash deposit in the same proportion  
2 as the original cash deposit bears to the full amount of the  
3 performance guarantee.

4 f. If any portion of the required improvements is rejected, the  
5 municipal authority may require the obligor to complete or correct  
6 such improvements and, upon completion or correction, the same  
7 procedure of notification, as set forth in this section shall be followed.

8 g. Nothing herein, however, shall be construed to limit the right of  
9 the obligor to contest by legal proceedings any determination of the  
10 municipal authority or the municipal authority engineer.

11 h. The obligor shall reimburse the municipal authority for all  
12 reasonable inspection fees paid to the municipal authority engineer for  
13 the foregoing inspection of improvements; provided that the municipal  
14 authority may require of the developer a deposit for the inspection fees  
15 in an amount not to exceed, except for extraordinary circumstances,  
16 the greater of \$500 or 5% of the cost of improvements, which cost  
17 shall be determined pursuant to section 15 of P.L. , c. (C. )  
18 (now pending before the Legislature as this bill). For those  
19 developments for which the reasonably anticipated fees are less than  
20 \$10,000, fees may, at the option of the developer, be paid in two  
21 installments. The initial amount deposited by a developer shall be 50%  
22 of the reasonably anticipated fees. When the balance on deposit drops  
23 to 10% of the reasonably anticipated fees because the amount  
24 deposited by the developer has been reduced by the amount paid to the  
25 municipal authority engineer for inspection, the developer shall deposit  
26 the remaining 50% of the anticipated inspection fees. For those  
27 developments for which the reasonably anticipated fees are \$10,000 or  
28 greater, fees may, at the option of the developer, be paid in four  
29 installments. The initial amount deposited by a developer shall be 25%  
30 of the reasonably anticipated fees. When the balance on deposit drops  
31 to 10% of the reasonably anticipated fees because the amount  
32 deposited by the developer has been reduced by the amount paid to the  
33 municipal authority engineer for inspection, the developer shall make  
34 additional deposits of 25% of the reasonably anticipated fees. The  
35 municipal authority engineer shall not perform any inspection if  
36 sufficient funds to pay for those inspections are not on deposit.

37 i. In the event that final approval is by stages or sections of  
38 development, the provisions of this section shall be applied by stage or  
39 section.

40 j. To the extent that any of the improvements have been dedicated  
41 to the municipal authority on the subdivision plat or site plan, the  
42 municipal authority shall be deemed, upon the release of any  
43 performance guarantee required pursuant to subsection a. of this  
44 section, to accept dedication for public use of water and sewer  
45 facilities and any other improvements made thereon according to site  
46 plans and subdivision plats approved by the municipal authority,

1 provided that such improvements have been inspected and have  
2 received final approval by the municipal authority engineer.

3  
4 12. a. The chief financial officer of a municipal authority shall  
5 make all of the payments to professionals for services rendered to the  
6 municipal authority for review of applications for development, review  
7 and preparation of documents, inspection of improvements or other  
8 purposes under the provisions of sections 11 through 16 of P.L. ,  
9 c. (C. ) (now pending before the Legislature as this bill).  
10 Such fees or charges shall be based upon a schedule established by  
11 resolution. The application review and inspection charges shall be  
12 limited only to professional charges for review of applications, review  
13 and preparation of documents and inspections of developments under  
14 construction and review by outside consultants when an application is  
15 of a nature beyond the scope of the expertise of the professionals  
16 normally utilized by the municipal authority. The only costs that shall  
17 be added to any such charges shall be actual out-of-pocket expenses  
18 of any such professionals or consultants including normal and typical  
19 expenses incurred in processing applications and inspecting  
20 improvements. The municipal authority shall not bill the applicant, or  
21 charge any escrow account or deposit authorized under subsection b.  
22 of this section, for any municipal authority clerical or administrative  
23 functions, overhead expenses, meeting room charges, or any other  
24 municipal authority costs and expenses except as provided for in this  
25 section, nor shall a municipal authority professional add any such  
26 charges to his bill. If the salary, staff support and overhead for a  
27 municipal authority professional are provided by the municipal  
28 authority, the charge shall not exceed 200% of the sum of the products  
29 resulting from multiplying (1) the hourly base salary, which shall be  
30 established annually by resolution, of each of the professionals by (2)  
31 the number of hours spent by the respective professional upon review  
32 of the application for development or inspection of the developer's  
33 improvements, as the case may be. For other professionals the charge  
34 shall be at the same rate as all other work of the same nature by the  
35 professional for the municipal authority when fees are not reimbursed  
36 or otherwise imposed on applicants or developers.

37 b. If the municipal authority requires of the developer a deposit  
38 toward anticipated municipal authority expenses for these professional  
39 services, the deposit shall be placed in an escrow account pursuant to  
40 section 1 of P.L.1985, c.316 (C.40:14B-20.1). The amount of the  
41 deposit required shall be reasonable in regard to the scale and  
42 complexity of the development. The amount of the initial deposit  
43 required shall be established by resolution. For review of applications  
44 for development proposing a subdivision, the amount of the deposit  
45 shall be calculated based on the number of proposed lots. For review  
46 of applications for development proposing a site plan, the amount of



1 the deposit shall be based on the area of the site to be developed, or  
2 the square footage of buildings to be constructed, or both. Deposits  
3 for inspection fees shall be established in accordance with subsection  
4 h. of section 11 of P.L. , c. (C. ) (now pending before the  
5 Legislature as this bill).

6 c. Each payment charged to the deposit for review of applications,  
7 review and preparation of documents and inspection of improvements  
8 shall be pursuant to a voucher from the professional, which voucher  
9 shall identify the personnel performing the service, and for each date  
10 the services performed, the hours spent to one-quarter hour  
11 increments, the hourly rate and the expenses incurred. All  
12 professionals shall submit vouchers to the chief financial officer of the  
13 municipal authority on a monthly basis in accordance with schedules  
14 and procedures established by the chief financial officer of the  
15 municipal authority. If the services are provided by a municipal  
16 authority employee, the municipal authority employee shall prepare  
17 and submit to the chief financial officer of the municipal authority a  
18 statement containing the same information as required on a voucher,  
19 on a monthly basis. The professional shall send an informational copy  
20 of all vouchers or statements submitted to the chief financial officer of  
21 the municipal authority simultaneously to the applicant. The chief  
22 financial officer of the municipal authority shall prepare and send to  
23 the applicant a statement which shall include an accounting of funds  
24 listing all deposits, interest earnings, disbursements, and the  
25 cumulative balance of the escrow account. This information shall be  
26 provided on a quarterly basis, if monthly charges are \$1,000 or less,  
27 or on a monthly basis if monthly charges exceed \$1,000. If an escrow  
28 account or deposit contains insufficient funds to enable the municipal  
29 authority to perform required application reviews or improvement  
30 inspections, the chief financial officer of the municipal authority shall  
31 provide the applicant with a notice of the insufficient escrow or  
32 deposit balance. In order for work to continue on the development or  
33 the application, the applicant shall within a reasonable time period post  
34 a deposit to the account in an amount to be agreed upon by the  
35 municipal authority and the applicant. In the interim, any required  
36 health and safety inspections shall be made and charged back against  
37 the replenishment of funds.

38 d. The following close-out procedure shall apply to all deposits and  
39 escrow accounts established under the provisions of sections 11  
40 through 16 of P.L. , c. (C. ) (now pending before the  
41 Legislature as this bill) and shall commence after the municipal  
42 authority has granted final approval and signed the subdivision plat or  
43 site plan, in the case of application review escrows and deposits, or  
44 after the improvements have been approved as provided in section 11  
45 of P.L. , c. (C. ) (now pending before the Legislature as  
46 this bill), in the case of improvement inspection escrows and deposits.

1 The applicant shall send written notice by certified mail to the chief  
2 financial officer of the municipal authority, and to the relevant  
3 municipal authority professional, that the application or the  
4 improvements, as the case may be, are completed. After receipt of  
5 such notice, the professional shall render a final bill to the chief  
6 financial officer of the municipal authority within 30 days, and shall  
7 send a copy simultaneously to the applicant. The chief financial officer  
8 of the municipal authority shall render a written final accounting to the  
9 applicant on the uses to which the deposit was put within 45 days of  
10 receipt of the final bill. Any balances remaining in the deposit or  
11 escrow account, including interest in accordance with section 1 of  
12 P.L.1985, c.316 (C.40:14B-20.1), shall be refunded to the developer  
13 along with the final accounting.

14 e. All professional charges for review of an application for  
15 development, review and preparation of documents or inspection of  
16 improvements shall be reasonable and necessary, given the status and  
17 progress of the application or construction. Review fees shall be  
18 charged only in connection with an application for development  
19 presently pending before the municipal authority or upon review of  
20 compliance with conditions of approval, or review of requests for  
21 modification or amendment made by the applicant. A professional  
22 shall not review items which are subject to approval by any State  
23 governmental agency and not under municipal authority jurisdiction  
24 except to the extent consultation with a State agency is necessary due  
25 to the effect of State approvals in the subdivision or site plan.  
26 Inspection fees shall be charged only for actual work shown on a  
27 subdivision or site plan or required by an approving resolution.  
28 Professionals inspecting improvements under construction shall charge  
29 only for inspections that are reasonably necessary to check the  
30 progress and quality of the work and such inspections shall be  
31 reasonably based on the approved development plans and documents.

32 f. If the municipal authority retains a different professional or  
33 consultant in the place of the professional originally responsible for  
34 development, application review, or inspection of improvements, the  
35 municipal authority shall be responsible for all time and expenses of  
36 the new professional to become familiar with the application or the  
37 project, and the municipal authority shall not bill the applicant or  
38 charge the deposit or the escrow account for any such services.

39  
40 13. A municipal authority shall not require that a maintenance  
41 guarantee required pursuant to section 11 of P.L. , c. (C. )  
42 (now pending before the Legislature as this bill) be in cash or that  
43 more than 10% of a performance guarantee pursuant to that section be  
44 in cash. A developer may, however, provide at his option some or all  
45 of a maintenance guarantee in cash, or more than 10% of a  
46 performance guarantee in cash.

1       14. a. An applicant shall notify in writing the municipal authority  
2 with copies to the chief financial officer and the professional whenever  
3 the applicant disputes the charges made by a professional for service  
4 rendered to the municipal authority in reviewing applications for  
5 development, review and preparation of documents, inspection of  
6 improvements, or other charges made pursuant to the provisions of  
7 sections 11 through 16 of P.L. , c. (C. ) (now pending  
8 before the Legislature as this bill). The municipal authority, or its  
9 designee, shall within a reasonable time period attempt to remediate  
10 any disputed charges. If the matter is not resolved to the satisfaction  
11 of the applicant, the applicant may appeal to the county construction  
12 board of appeals established under section 9 of P.L.1975, c.217  
13 (C.52:27D-127) any charge to an escrow account or a deposit by any  
14 municipal authority professional or consultant, or the cost of the  
15 installation of improvements estimated by the municipal authority  
16 engineer pursuant to section 15 of P.L. , c. (C. ) (now  
17 pending before the Legislature as this bill). An applicant or his  
18 authorized agent shall submit the appeal in writing to the county  
19 construction board of appeals. The applicant or his authorized agent  
20 shall simultaneously send a copy of the appeal to the municipal  
21 authority and any professional whose charge is the subject of the  
22 appeal. An applicant shall file an appeal within 45 days from receipt  
23 of the informational copy of the professional's voucher required by  
24 subsection c. of section 12 of P.L. , c. (C. ) (now pending  
25 before the Legislature as this bill), except that if the professional has  
26 not supplied the applicant with an informational copy of the voucher,  
27 then the applicant shall file his appeal within 60 days from receipt of  
28 the municipal authority statement of activity against the deposit or  
29 escrow account required by subsection c. of section 12 of P.L. , c.  
30 (C. ) (now pending before the Legislature as this bill). An  
31 applicant may file an appeal for an ongoing series of charges by a  
32 professional during a period not exceeding six months to demonstrate  
33 that they represent a pattern of excessive or inaccurate charges. An  
34 applicant making use of this provision need not appeal each charge  
35 individually.

36       b. The county construction board of appeals shall hear the appeal,  
37 render a decision thereon, and file its decision with a statement of the  
38 reasons therefor with the municipal authority not later than 10 business  
39 days following the submission of the appeal, unless such period of time  
40 has been extended with the consent of the applicant. The decision may  
41 approve, disapprove, or modify the professional charges appealed  
42 from. A copy of the decision shall be forwarded by certified or  
43 registered mail to the party making the appeal, the municipal authority,  
44 and the professional involved in the appeal. Failure by the board to  
45 hear an appeal and render and file a decision thereon within the time  
46 limits prescribed in this subsection shall be deemed a denial of the

1 appeal for purposes of a complaint, application, or appeal to a court  
2 of competent jurisdiction.

3 c. The county construction board of appeals shall provide rules for  
4 its procedure in accordance with this section. The board shall have the  
5 power to administer oaths and issue subpoenas to compel the  
6 attendance of witnesses and the production of relevant evidence, and  
7 the provisions of the "County and Municipal Investigations Law,"  
8 P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

9 d. During the pendency of any appeal, the municipal authority shall  
10 continue to process, hear, and decide the application for development,  
11 and to inspect the development in the normal course, and shall not  
12 withhold, delay, or deny reviews, inspections, signing of subdivision  
13 plats or site plans, the reduction or the release of performance or  
14 maintenance guarantees, the issuance of construction permits or  
15 certificates of occupancy, or any other approval or permit because an  
16 appeal has been filed or is pending under this section. The chief  
17 financial officer of the municipal authority may pay charges out of the  
18 appropriate escrow account or deposit for which an appeal has been  
19 filed. If a charge is disallowed after payment, the chief financial  
20 officer of the municipal authority shall reimburse the deposit or escrow  
21 account in the amount of any such disallowed charge or refund the  
22 amount to the applicant. If a charge is disallowed after payment to a  
23 professional or consultant who is not an employee of the municipal  
24 authority, the professional or consultant shall reimburse the municipal  
25 authority in the amount of any such disallowed charge.

26 e. The Commissioner of Community Affairs shall promulgate rules  
27 and regulations pursuant to the "Administrative Procedure Act,"  
28 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
29 this section.

30

31 15. The cost of the installation of improvements for the purposes  
32 of section 11 of P.L. , c. (C. ) (now pending before the  
33 Legislature as this bill) shall be estimated by the municipal authority  
34 engineer based on documented construction costs for public  
35 improvements prevailing in the general area of the municipal authority.  
36 The developer may appeal the municipal authority engineer's estimate  
37 to the county construction board of appeals established under section  
38 9 of P.L.1975, c.217 (C.52:27D-127).

39

40 16. The municipal authority shall, for the purposes of section 11 of  
41 P.L. , c. (C. ) (now pending before the Legislature as this  
42 bill), accept a performance guarantee or maintenance guarantee which  
43 is an irrevocable letter of credit if it:

44 a. Constitutes an unconditional payment obligation of the issuer  
45 running solely to the municipal authority for an express initial period  
46 of time in the amount determined pursuant to section 11 of P.L. , c.

- 1 (C. ) (now pending before the Legislature as this bill);  
2 b. Is issued by a banking or savings institution authorized to do and  
3 doing business in this State;  
4 c. Is for a period of time of at least one year; and  
5 d. Permits the municipal authority to draw upon the letter of credit  
6 if the obligor fails to furnish another letter of credit which complies  
7 with the provisions of this section 30 days or more in advance of the  
8 expiration date of the letter of credit or such longer period in advance  
9 thereof as is stated in the letter of credit.

10

11 17. This act shall take effect 90 days after enactment.

12

13

14

#### STATEMENT

15

16 This bill would establish procedures and standards for sewerage and  
17 municipal and county utility authorities to use in the managing and  
18 accounting of escrow accounts and performance guarantees. It also  
19 would establish procedures for appealing disputed guarantee estimates  
20 and escrow charges. Existing law does not provide procedural  
21 guidelines for the use of escrow accounts and performance guarantees  
22 for sewerage and municipal and county utility authorities. The  
23 sponsor believes that such a procedural framework is needed. Since  
24 an accepted procedural framework already exists in the "Municipal  
25 Land Use Law," P.L. 1975, c.291 (C.40:55D-1 et seq.), and sewerage  
26 and municipal and county utility authorities are created by  
27 municipalities and counties, this same procedural framework is used  
28 in this bill.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 667**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 19, 1998

The Senate Community and Urban Affairs Committee reports favorably, and with committee amendments, Senate Bill No. 667.

Senate Bill 667, as amended by the committee, would establish procedures and standards for sewerage and municipal and county utility authorities to use in the managing and accounting of escrow accounts and performance guarantees. It also would establish procedures for appealing disputed guarantee estimates and escrow charges. Existing law does not provide procedural guidelines for the use of escrow accounts and performance guarantees for sewerage and municipal and county utility authorities. Since a procedural framework already exists in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and sewerage and municipal and county utility authorities are created by municipalities and counties, this same procedural framework is used in this bill.

Like the analogous MLUL provisions, this bill, as amended, would authorize sewerage and municipal and county utility authorities to require and accept performance guarantees in an amount not to exceed 120 percent of the cost of installation, which cost shall be determined or approved by the sewerage authority engineer according to the method of calculation set forth in the bill, for improvements which the sewerage authority deems necessary. The sewerage authority engineer is required to prepare an itemized cost estimate of the improvements covered by the performance guarantee or approve an itemized estimate of the improvements as prepared by the developer's engineer.

The estimate of the cost of installation of improvements is to be based on documented construction costs for public improvements prevailing in the general area of the sewerage authority. Any estimate prepared by the applicant's engineer is subject to the approval of the sewerage authority engineer and, as under the MLUL, the developer is authorized to appeal the sewerage authority engineer's estimate or decision to the county construction board of appeals.

Similarly, the amended bill authorizes these authorities to accept maintenance guarantees in an amount not to exceed 15 percent of the cost of the improvement, determined in the same way as performance guarantees, which is described above.

The amended bill sets forth a procedure to govern how the escrow moneys are reimbursed upon substantial completion of all required utility improvements and their connection to the public system. In that case, the obligor may request of the appropriate authority, in writing, that the authority prepare, in accordance with the itemized cost estimate prepared or approved by the authority engineer, a list of all uncompleted or unsatisfactory completed improvements. The list shall state in detail the nature and extent of any incomplete or unsatisfactory improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed improvement determined to be unsatisfactory. The authority is required to recommend the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvements in accordance with the itemized cost estimated prepared or approved by the authority engineer.

The authority, by resolution, shall either approve the improvements determined to be complete and satisfactory by the authority or reject any or all of these improvements upon the establishment of cause for rejection. The bill sets forth sanctions in case the authority fails to send or provide the list and report within 45 days from receipt of the request. The bill also specifies what happens if the obligor has made a cash deposit as part of the performance guarantee.

Not only does the procedure govern withholding of performance and maintenance guarantees, but also addresses the amount of inspection fees which may be paid, which is the greater of \$500 or 5% of the cost of improvements, except under extraordinary circumstances. The developer is required to deposit with the authority the full amount of reasonably anticipated inspection fees unless the section of the development under construction is of a large size and the infrastructure is to be constructed in phases.

The amended bill governs the payment to professionals for services rendered based upon a schedule established by resolution. The bill also specifies which professional activities may be charged for.

Finally, the amended bill establishes a detailed procedure for closing out deposits and escrow accounts. Any balances remaining in the deposit or escrow accounts, including interest, are to be refunded to the developer along with the final accounting. The bill sets forth an appeal procedure in the event that disputes arise, utilizing the county construction board of appeals as the forum for dispute resolution and thereby following the model which currently exists for resolving disputes over performance and maintenance guarantees under the MLUL.

The committee amended the bill to: permit a developer's engineer to prepare itemized cost estimates of improvements, upon the approval of the authority engineer; remove the specific requirement that the authority engineer inspect and report on improvements; change the amount of the performance guarantee to secure completion or correction of unapproved improvements from 30% to an amount equal

to the remaining open improvements; change set percentages of amounts a developer is required to deposit with the authority for inspection fees to the full amount of reasonably anticipated inspection fees, except that for a large project being constructed in phases, only the amount of reasonably anticipated inspection fees for each phase is required to be deposited.

The committee amendments also define the position of finance officer of an authority and permit an authority to establish the amount of an initial deposit required of a developer for professional services to be set by the rules and regulations of the authority or by a resolution. A later resolution would supersede an amount set by rules and regulations. When an applicant disputes charges for professional services made in the review of an application, the committee amendments require that the disputed charges shall be specifically outlined in correspondence, including the dates, times, and personnel in dispute.

As amended by the committee, this bill is identical to Assembly Bill No. 511 (1R), also reported by the committee on October 19, 1998.