

40:55D-137

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 2

NJSA: 40:55D-137 (municipalities establish transfer of development rights)

BILL NO: A2480 (Substituted for S1287)

SPONSOR(S): Roberts and others

DATE INTRODUCED: March 4, 2004

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste
SENATE ----

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** March 15, 2004
SENATE: March 22, 2004

DATE OF APPROVAL: March 29, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Original version of bill enacted

A2480

[SPONSOR'S STATEMENT:](#) (Begins on page 36 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

S1287

[SPONSOR'S STATEMENT:](#) (Begins on page 36 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A2480

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)
Identical to Assembly Statement to A2480

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)
Identical to fiscal estimate for A2480

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"McGreevey signs law to help halt sprawl," 3-30-2004 Asbury Park Press, p.A3

"Law has way to save land, profit from development," 3-30-2004 Philadelphia Inquirer, p.B4

"Anti-sprawl plan signed into law," 3-30-2004 The Record, p.A5

"McGreevey signs measure to control suburban sprawl,," 3-30-2004 Courier-Post, p.8A

"Law allow stowns to transfer development rights," 3-30-2004 The Press, p.

"Gov. signs anti-sprawl legislation," 3-30-2004 Home News Tribune, p.A3

Title 40.
Chapter 55D.
Article 17. (New)
State Transfer of
Development Rights.
§§1-27 -
C.40:55D-137
to 40:55D-163
§31-Note to 4:1C-52
§40 - Note to §§1-39
Retitle Art.15 as
Transfer of
Development Rights
Demonstration

P.L. 2004, CHAPTER 2, *approved March 29, 2004*
Assembly, No. 2480

1 **AN ACT** authorizing the transfer of development rights by
2 municipalities, amending P.L.1993, c.339, P.L.1983, c.32, and
3 amending and supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).
4

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

7
8 1. (New section) Sections 1 through 27 of this act shall be known
9 and may be cited as the "State Transfer of Development Rights Act."
10

11 2. (New section) The Legislature finds and declares that as the
12 most densely populated state in the nation, the State of New Jersey is
13 faced with the challenge of accommodating vital growth while
14 maintaining the environmental integrity, preserving the natural
15 resources, and strengthening the agricultural industry and cultural
16 heritage of the Garden State; that the responsibility for meeting this
17 challenge falls most heavily upon local government to appropriately
18 shape the land use patterns so that growth and preservation become
19 compatible goals; that until now municipalities in most areas of the
20 State have lacked effective and equitable means by which potential
21 development may be transferred from areas where preservation is most
22 appropriate to areas where growth can be better accommodated and
23 maximized; and that the tools necessary to meet the challenge of
24 balanced growth in an equitable manner in New Jersey must be made
25 available to local government as the architects of New Jersey's future.

26 The Legislature further finds and declares that the "Burlington
27 County Transfer of Development Rights Demonstration Act,"
28 P.L.1989, c.86 (C.40:55D-113 et al.), was enacted in 1989 as a pilot
29 transfer of development rights (TDR) program to demonstrate the
30 feasibility of TDR as a land use planning tool; and that the Burlington

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

Matter underlined thus is new matter.

1 County pilot program has been a success and should now be expanded
2 to the remainder of the State of New Jersey in a manner that is fair and
3 equitable to all landowners.

4 The Legislature therefore determines that it is in the public interest
5 to authorize all municipalities in the State to establish and implement
6 TDR programs.

7
8 3. (New section) a. The governing body of any municipality that
9 fulfills the criteria set forth in section 4 of P.L. , c . (C.)
10 (pending before the Legislature as this bill) may, by ordinance
11 approved by the county planning board, provide for the transfer of
12 development potential within its jurisdiction. The governing bodies of
13 two or more municipalities that fulfill the criteria set forth in section
14 4 of P.L. , c. (C.) (pending before the Legislature as this bill)
15 may, by substantially similar ordinances approved by their respective
16 county planning boards, provide for a joint program for the transfer of
17 development potential, including transfers from sending zones in one
18 municipality to receiving zones in the other, regardless of whether or
19 not those municipalities are situated within the same county. Any such
20 program shall be carried out by the municipal planning board or
21 boards.

22 A program may include the designation of one or more sending or
23 receiving zones.

24 b. The Office of Smart Growth shall provide such technical
25 assistance as may be requested by municipalities or a county planning
26 board, and as may be reasonably within the capacity of the office to
27 provide, in the preparation, implementation or review, as the case may
28 be, of the master plan elements required to have been adopted by the
29 municipality as a condition for adopting a development transfer
30 ordinance pursuant to section 4 of P.L. , c. (C.) (pending
31 before the Legislature as this bill), capital improvement program or
32 development transfer ordinance.

33
34 4. (New section) Prior to the adoption or amendment of any
35 development transfer ordinance, a municipality shall:

36 a. Adopt a development transfer plan element of its master plan
37 pursuant to paragraph (14) of subsection b. of section 19 of P.L.1975,
38 c.291 (C.40:55D-28) in accordance with the requirements of section
39 5 of P.L. , c. (C.) (pending before the Legislature as this
40 bill);

41 b. Adopt a capital improvement program pursuant to section 20 of
42 P.L.1975, c.291 (C.40:55D-29) for the receiving zone, which includes
43 the location and cost of all infrastructure and a method of cost sharing
44 if any portion of the cost is to be assessed against developers pursuant
45 to section 30 of P.L.1975, c.291 (C.40:55D-42);

46 c. Adopt a utility service plan element of the master plan pursuant

1 to section 19 of P.L.1975, c.291 (C.40:55D-28) that specifically
2 addresses providing necessary utility services within any designated
3 receiving zone within a specified time period so that no development
4 seeking to utilize development potential transfer is unreasonably
5 delayed because utility services are not available;

6 d. Prepare a real estate market analysis pursuant to section 12 of
7 P.L. , c. (C.) (pending before the Legislature as this bill)
8 which examines the relationship between the development rights
9 anticipated to be generated in the sending zones and the capacity of
10 designated receiving zones to accommodate the necessary
11 development; and

12 e. Either receive approval of: (1) its initial petition for endorsement
13 of its master plan by the State Planning Commission pursuant to
14 P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted
15 pursuant thereto either individually, or as part of a county or regional
16 plan, provided that the petition included the development transfer
17 ordinance and supporting documentation, or (2) the development
18 transfer ordinance and supporting documentation as an amendment to
19 a previously approved petition for master plan endorsement by the
20 State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-
21 196 et seq.) and regulations adopted pursuant thereto.

22

23 5. (New section) In order to serve as the basis for a development
24 transfer ordinance pursuant to subsection a. of section 4 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill), a
26 development transfer plan element of a masterplan shall include:

27 a. an estimate of the anticipated population and economic growth
28 in the municipality for the succeeding 10 years;

29 b. the identification and description of all prospective sending and
30 receiving zones;

31 c. an analysis of how the anticipated population growth estimated
32 pursuant to subsection a. of this section is to be accommodated within
33 the municipality in general, and the receiving zone or zones in
34 particular;

35 d. an estimate of existing and proposed infrastructure of the
36 proposed receiving zone;

37 e. a presentation of the procedure and method for issuing the
38 instruments necessary to convey the development potential from the
39 sending zone to the receiving zone; and

40 f. explicit planning objectives and design standards to govern the
41 review of applications for development in the receiving zone in order
42 to facilitate their review by the approving authority.

43

44 6. (New section) a. Any municipality located in whole or in part
45 in the pinelands area, as defined in the "Pinelands Protection Act,"
46 P.L.1979, c.111 (C.13:18A-1 et seq.), shall submit the proposed

1 development transfer ordinance, development transfer and utility
2 service plan elements of the master plan, real estate market analysis,
3 and capital improvement program to the Pinelands Commission for
4 review for those areas included in that proposed ordinance that are
5 situated within the pinelands area. The Pinelands Commission shall
6 determine whether the proposed ordinance is compatible with the
7 provisions of the "Pinelands Development Credit Bank Act,"
8 P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent
9 with the comprehensive management plan adopted by the Pinelands
10 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the
11 commission determines that the proposed development transfer
12 ordinance is not compatible or consistent, the commission shall make
13 such recommendations as may be necessary to conform the proposed
14 ordinance with the comprehensive management plan. The municipality
15 shall not adopt the proposed ordinance unless the changes
16 recommended by the Pinelands Commission have been included in the
17 ordinance.

18 b. No development transfer ordinance that involves land in the
19 pinelands area shall take effect unless it has been certified by the
20 Pinelands Commission pursuant to the provisions of the "Pinelands
21 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the
22 comprehensive management plan.

23

24 7. (New section) A municipality which provides for the transfer of
25 development as set forth in section 3 of P.L. , c. (C.)
26 (pending before the Legislature as this bill) shall prepare or amend a
27 development transfer ordinance that designates sending and receiving
28 zones and is substantially consistent with or designed to effectuate the
29 development transfer plan element of the master plan adopted pursuant
30 to section 19 of P.L.1975, c.291 (C.40:55D-28) and the capital
31 improvement program adopted pursuant to section 20 of P.L.1975,
32 c.291 (C.40:55D-29). A governing body that chooses to adopt an
33 ordinance or amendment or revision thereto which in whole or in part
34 is inconsistent with the development transfer plan element of the
35 master plan or the capital improvement program may do so only by
36 affirmative vote of a majority of the full authorized membership of the
37 governing body, with the reasons of the governing body for so acting
38 set forth in a resolution and recorded in its minutes when adopting
39 such an ordinance.

40 In creating and establishing sending and receiving zones, the
41 governing body of the municipality shall designate tracts of land of
42 such size and number and with such boundaries, densities and
43 permitted uses as may be necessary to carry out the purposes of
44 P.L. , c. (C.) (pending before the Legislature as this bill).

45 The adoption or amendment of a development transfer ordinance
46 shall be considered a change to the classifications or boundaries of a

1 zoning district and therefore subject to the notification requirements
2 of section 2 of P.L.1995, c.249 (C.40:55D-62.1).

3
4 8. (New section) a. A sending zone shall be composed
5 predominantly of land having one or more of the following
6 characteristics:

7 (1) agricultural land, woodland, floodplain, wetlands, threatened
8 or endangered species habitat, aquifer recharge area, recreation or
9 park land, waterfront, steeply sloped land or other lands on which
10 development activities are restricted or precluded by duly enacted
11 local laws or ordinances or by laws or regulations adopted by federal
12 or State agencies;

13 (2) land substantially improved or developed in a manner so as to
14 present a unique and distinctive aesthetic, architectural, or historical
15 point of interest in the municipality;

16 (3) other improved or unimproved areas that should remain at low
17 densities for reasons of inadequate transportation, sewerage or other
18 infrastructure, or for such other reasons as may be necessary to
19 implement the State Development and Redevelopment Plan adopted
20 pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and local or
21 regional plans.

22 b. Notwithstanding subsection a. of this section, lands permanently
23 restricted through development easements or conservation easements
24 existing prior to the adoption of a development transfer ordinance may
25 be included in a sending zone upon a finding by the municipal
26 governing body that this inclusion is in the public interest.

27 c. The development transfer ordinance may assign bonus
28 development potential to specified properties in the sending zone
29 based on specified criteria in order to encourage the permanent
30 protection of those lands pursuant to the development transfer
31 ordinance.

32
33 9. (New section) a. A receiving zone shall be appropriate and
34 suitable for development and shall be at least sufficient to
35 accommodate all of the development potential of the sending zone,
36 and at all times there shall be a reasonable likelihood that a balance is
37 maintained between sending zone land values and the value of the
38 transferable development potential.

39 b. The development potential of the receiving zone shall be
40 realistically achievable, considering: (1) the availability of all necessary
41 infrastructure; (2) all of the provisions of the zoning ordinance
42 including those related to density, lot size and bulk requirements; and
43 (3) given local land market conditions as of the date of the adoption
44 of the development transfer ordinance.

45 c. The development potential of the receiving zone shall be
46 consistent with the criteria established pursuant to subsection b. of

1 section 13 of P.L. , c. (C.) (pending before the Legislature
2 as this bill).

3 d. All infrastructure necessary to support the development of the
4 receiving zone as set forth in the zoning ordinance shall either exist or
5 be scheduled to be provided so that no development requiring the
6 purchase of transferable development potential shall be unreasonably
7 delayed because the necessary infrastructure will not be available due
8 to any action or inaction by the municipality.

9 e. No density increases may be achieved in a receiving zone
10 without the use of appropriate instruments of transfer.

11

12 10. (New section) Except as otherwise provided in this section, a
13 development transfer ordinance shall provide that, on granting a
14 variance under subsection d. of section 57 of P.L.1975, c.291
15 (C.40:55D-70) that increases the development potential of a parcel of
16 property not in the designated receiving zone for which the variance
17 has been granted by more than 5%, that parcel of property shall
18 constitute a receiving zone and the provisions of the ordinance for
19 receiving zones shall apply with respect to the amount of development
20 potential required to implement that variance.

21 This section shall not apply to any development that fulfills the
22 definition of a minor site plan or minor subdivision.

23

24 11. (New section) a. A development transfer ordinance shall
25 provide for the issuance of such instruments as may be necessary and
26 the adoption of procedures for recording the permitted use of the land
27 at the time of the recording, the separation of the development
28 potential from the land, and the recording of the allowable residual use
29 of the land upon separation of the development potential.

30 b. A development transfer ordinance shall specifically provide that
31 upon the transfer of development potential from a sending zone, the
32 owner of the property from which the development potential has been
33 transferred shall cause a statement containing the conditions of the
34 transfer and the terms of the restrictions of the use and development
35 of the land to be attached to and recorded with the deed of the land in
36 the same manner as the deed was originally recorded. These
37 restrictions and conditions shall state that any development
38 inconsistent therewith is expressly prohibited, shall run with the land,
39 and shall be binding upon the landowner and every successor in
40 interest thereto.

41 c. The restrictions shall be expressly enforceable by the
42 municipality and the county in which the property is located, any
43 interested party, and the State of New Jersey.

44 d. All development potential transfers shall be recorded in the
45 manner of a deed in the book of deeds in the office of the county clerk
46 or county register of deeds and mortgages, as appropriate. This

1 recording shall specify the lot and block number of the parcel in the
2 sending zone from which the development potential was transferred
3 and the lot and block number of the parcel in the receiving zone to
4 which the development potential was transferred.

5 e. All development potential transfers also shall be recorded with
6 the State Transfer of Development Rights Bank in the Development
7 Potential Transfer Registry as required pursuant to section 5 of
8 P.L.1993, c.339 (C.4:1C-53).

9
10 12. (New section) a. Prior to the final adoption of a development
11 transfer ordinance or any significant amendment to an existing
12 development transfer ordinance, the planning board shall conduct a
13 real estate market analysis of the current and future land market which
14 examines the relationship between the development rights anticipated
15 to be generated in the sending zone and the likelihood of their
16 utilization in the designated receiving zone. The analysis shall include
17 thorough consideration of the extent of development projected for the
18 receiving zone and the likelihood of its achievement given current and
19 projected market conditions in order to assure that the designated
20 receiving zone has the capacity to accommodate the development
21 rights anticipated to be generated in the sending zone. The real estate
22 market analysis shall conform to rules and regulations adopted
23 pursuant to subsection c. of this section.

24 b. Upon completion of the real estate market analysis and at a
25 meeting of the planning board held prior to the meeting at which the
26 development transfer ordinance receives first reading, the planning
27 board shall hold a hearing on the real estate market analysis.

28 The hearing shall be held in accordance with the provisions of
29 subsections a. through f. of section 6 of P.L.1975, c.291 (C.40:55D-
30 10).

31 c. The Commissioner of Community Affairs, in consultation with
32 the board of directors of the State Transfer of Development Rights
33 Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-
34 51), shall within 180 days of the enactment of P.L. , c. (C.)
35 (pending before the Legislature as this bill), adopt rules and
36 regulations which set forth the required contents of the real estate
37 market analysis.

38
39 13. (New section) a. Prior to adoption of a development transfer
40 ordinance or of any amendment of an existing development transfer
41 ordinance, the municipality shall submit a copy of the proposed
42 ordinance, copies of the development transfer and utility service plan
43 elements of the master plan adopted pursuant to section 19 of
44 P.L.1975, c.291 (C.40:55D-28) and capital improvement program
45 adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29),
46 proposed municipal master plan changes necessary for the enactment

1 of the development transfer ordinance, and the real estate market
2 analysis to the county planning board. If the ordinance and master
3 plan changes involve agricultural land, then the county agriculture
4 development board shall also be provided information identical to that
5 provided to the county planning board.

6 b. The county planning board, upon receiving the proposed
7 development transfer ordinance and accompanying documentation,
8 shall conduct a review of the proposed ordinance with regard to the
9 following criteria:

10 (1) consistency with the adopted master plan of the county;

11 (2) support of regional objectives for agricultural land
12 preservation, natural resource management and protection, historic or
13 architectural conservation, or the preservation of other public values
14 as enumerated in subsection a. of section 8 of P.L. , c. (C.)
15 (pending before the Legislature as this bill);

16 (3) consistency with reasonable population and economic forecasts
17 for the county; and

18 (4) sufficiency of the receiving zone to accommodate the
19 development potential that may be transferred from sending zones and
20 a reasonable assurance of marketability of any instruments of transfer
21 that may be created.

22

23 14. (New section) a. Within 60 days after receiving a proposed
24 development transfer ordinance and accompanying documentation
25 transmitted pursuant to section 13 of P.L. , c. (C.)
26 (pending before the Legislature as this bill), the county planning board
27 shall submit to the municipality formal comments detailing its review
28 and shall either recommend or not recommend enactment of the
29 proposed development transfer ordinance. If enactment of the
30 proposed ordinance is recommended, the municipality may proceed
31 with adoption of the ordinance. Failure to submit recommendations
32 within the 60-day period shall constitute recommendation of the
33 ordinance.

34 b. The CADB shall review a proposed development transfer
35 ordinance and accompanying documentation within 30 days of receipt
36 thereof, and shall submit such written recommendations as it deems
37 appropriate, to the county planning board.

38 c. If the county planning board does not recommend enactment, the
39 reasons therefor shall be clearly stated in the formal comments. If the
40 objections of the county planning board cannot be resolved to the
41 satisfaction of both the municipality and the county planning board
42 within an additional 30 days, the municipality shall petition the Office
43 of Smart Growth to render a final determination pursuant to section
44 15 of P.L. , c. (C.) (pending before the Legislature as this
45 bill).

1 15. When the Office of Smart Growth receives a petition pursuant
2 to subsection c. of section 14 of P.L. , c. (C.) (pending
3 before the Legislature as this bill), it shall review the petition, the
4 record of comment of the county planning board, any supporting
5 documentation submitted by the municipality, and any comments
6 received from property owners in the sending or receiving zones and
7 other members of the public. Within 60 days after receipt of the
8 petition, the Office of Smart Growth shall approve, approve with
9 conditions, or disapprove the proposed development transfer
10 ordinance, stating in writing the reasons therefor. The basis for review
11 by the Office of Smart Growth shall be:

12 a. compliance of the proposed development transfer ordinance with
13 the provisions of P.L. , c. (C.) (pending before the
14 Legislature as this bill);

15 b. accuracy of the information developed in the proposed
16 development transfer ordinance, the development transfer and utility
17 service plan elements of the master plan adopted pursuant to section
18 19 of P.L.1975, c.291 (C.40:55D-28), the real estate market analysis
19 and capital improvement program adopted pursuant to section 20 of
20 P.L.1975, c.291 (C.40:55D-29);

21 c. an assessment of the potential for successful implementation of
22 the proposed development transfer ordinance; and

23 d. consistency with any plan that applies to the municipality that
24 has been endorsed by the State Planning Commission pursuant to
25 P.L.1985, c.398 (C.52:18A-196 et al.) and its implementing
26 regulations.

27
28 16. If the Office of Smart Growth determines, in response to a
29 municipal petition submitted pursuant to subsection c. of section 14 of
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 that the proposed development transfer ordinance may be approved,
32 the municipality may proceed with adoption of the proposed
33 ordinance. If the Office of Smart Growth determines that the
34 proposed ordinance may be approved with conditions, the Office of
35 Smart Growth shall make such recommendations as may be necessary
36 for the proposed ordinance to be approved. The municipality shall not
37 adopt the proposed ordinance unless the changes recommended by the
38 Office of Smart Growth have been included in the proposed
39 ordinance. If the Office of Smart Growth determines that the
40 development transfer ordinance should be disapproved, the
41 municipality may not proceed with adoption of the proposed
42 ordinance.

43 The decision by the Office of Smart Growth on the petition shall
44 have the effect of a final agency action and any appeal of that decision
45 shall be made directly to the Appellate Division of the Superior Court.

1 17. (New section) a. The county clerk or county register of deeds
2 and mortgages, as the case may be, shall transmit to the assessor of the
3 municipality in which a development potential transfer has occurred a
4 record of the transfer and all pertinent information required to value,
5 assess, and tax the properties subject to the transfer in a manner
6 consistent with subsection b. of this section.

7 b. Property from which and to which development potential has
8 been transferred shall be assessed at its fair market value reflecting the
9 development transfer. Development potential that has been removed
10 from a sending zone but has not yet been employed in a receiving zone
11 shall not be assessed for real property taxation. Nothing in P.L. ,
12 c. (C.) (pending before the Legislature as this bill) shall be
13 construed to affect, or in any other way alter, the valuation
14 assessment, or taxation of land that is valued, assessed, and taxed
15 pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48
16 (C.54:4-23.1 et seq.).

17 c. Property in a sending or receiving zone that has been subject to
18 a development potential transfer shall be newly valued, assessed, and
19 taxed as of October 1 next following the development potential
20 transfer.

21 d. Development potential that has been conveyed from a property
22 pursuant to P.L. , c. (C.) (pending before the
23 Legislature as this bill) shall not be subject to any fee imposed
24 pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).
25

26 18. (New section) The absence of either of the following shall
27 constitute a rebuttable presumption that a development transfer
28 ordinance is no longer reasonable:

29 a. plan endorsement pursuant to P.L.1985, c.398 (C.52:18A-196
30 et seq.) or regulations adopted pursuant thereto is no longer in effect
31 for that municipality; or

32 b. a sufficient percentage of the development potential has not been
33 transferred in that municipality as provided in section 20 of P.L. ,
34 c. (C.) (pending before the Legislature as this bill).

35 If the ordinance of a municipality that is a participant of a joint
36 program pursuant to section 3 of P.L. , c. (C.) (pending
37 before the Legislature as this bill) is presumed to be no longer
38 reasonable pursuant to this section, then the ordinances of all
39 participating municipalities also shall be presumed to be no longer
40 reasonable.
41

42 19. (New section) A development transfer ordinance and real
43 estate market analysis shall be reviewed by the planning board and
44 governing body of the municipality at the end of three years
45 subsequent to its adoption. This review shall include an analysis of
46 development potential transactions in both the private and public

1 market, an update of current conditions in comparison to the
2 development transfer plan element of the master plan adopted pursuant
3 to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital
4 improvement program adopted pursuant to section 20 of P.L.1975,
5 c.291 (C.40:55D-29), and an assessment of the performance goals of
6 the development transfer program, including an evaluation of the units
7 constructed with and without the utilization of the development
8 transfer ordinance. A report of findings from this review shall be
9 submitted to the county planning board, the Office of Smart Growth
10 and, when the sending zone includes agricultural land, the CADB for
11 review and recommendations. Based on this review the municipality
12 shall act to maintain and enhance the value of development transfer
13 potential not yet utilized and, if necessary, amend the capital
14 improvement program adopted pursuant to section 20 of P.L.1975,
15 c.291 (C.40:55D-29), the development transfer plan element of the
16 master plan adopted pursuant to section 19 of P.L.1975, c.291
17 (C.40:55D-28) and the development transfer ordinance adopted
18 pursuant to P.L. , c. (C.) (pending before the Legislature as this
19 bill).

20

21 20. (New section) A development transfer ordinance and the real
22 estate market analysis also shall be reviewed by the planning board and
23 governing body of the municipality at the end of five years subsequent
24 to its adoption. This review shall provide for the examination of the
25 development transfer ordinance and the real estate market analysis to
26 determine whether the program for development transfer and the
27 permitted uses in the sending zone continue to remain economically
28 viable, and, if not, an update of the development transfer plan element
29 of the master plan adopted pursuant to section 19 of P.L.1975, c.291
30 (C.40:55D-28) and capital improvement program adopted pursuant to
31 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If at
32 least 25% of the development potential has not been transferred at the
33 end of this five-year period, the development transfer ordinance shall
34 be presumed to be no longer reasonable, including any zoning changes
35 adopted as part of the development transfer program, within 90 days
36 after the end of the five-year period unless one of the following is met:

37 a. the municipality immediately takes action to acquire or provide
38 for the private purchase of the difference between the development
39 potential already transferred and 25% of the total development transfer
40 potential created in the sending zone under the development transfer
41 ordinance;

42 b. a majority of the property owners in a sending zone who own
43 land from which the development potential has not yet been
44 transferred agree that the development transfer ordinance should
45 remain in effect;

46 c. the municipality can demonstrate either future success or can

1 demonstrate that low levels of development potential transfer activity
2 are due, not to ordinance failure, but to low levels of development
3 demand in general. This demonstration shall require the concurrence
4 of the county planning board and the Office of Smart Growth, and
5 shall be the subject of a municipal public hearing conducted prior to a
6 final determination regarding the future viability of the development
7 transfer program; or

8 d. the municipality can demonstrate that less than 25% of the
9 remaining development potential in the sending zone has been available
10 for sale at market value during the five-year period.

11

12 21. (New section) Following review of a development transfer
13 ordinance as provided in section 20 of P.L. , c. (C.) (pending
14 before the Legislature as this bill), the planning board and the
15 governing body of the municipality shall review the development
16 transfer ordinance and real estate market analysis at least once every
17 five years with every second review occurring in conjunction with the
18 review and update of the master plan of the municipality pursuant to
19 the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This
20 review shall provide for the examination of the ordinance and the real
21 estate market analysis to determine whether the program and uses
22 permitted in the sending zone continue to be economically viable and,
23 if not, an update of the development transfer plan element of the
24 master plan adopted pursuant to section 19 of P.L.1975, c.291
25 (C.40:55D-28) and capital improvement program adopted pursuant to
26 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.

27 If 25% of the remaining development transfer potential at the start
28 of each five-year review period in the sending zone under the
29 development transfer ordinance has not been transferred during the
30 five-year period, the municipal governing body shall repeal the
31 development transfer ordinance, including any zoning changes adopted
32 as part of the development transfer program, within 90 days after the
33 end of that five-year period unless the municipality meets one of the
34 standards established pursuant to section 20 of P.L. , c. (C.)
35 (pending before the Legislature as this bill).

36

37 22. (New section) a. The governing body of any municipality that
38 has adopted a development transfer ordinance, or the governing body
39 of any county in which at least one municipality has adopted a
40 development transfer ordinance, may provide for the purchase, sale,
41 or exchange of the development potential that is available for transfer
42 from a sending zone by the establishment of a development transfer
43 bank. Alternatively, the governing body of any municipality which has
44 adopted a development transfer ordinance and has not established a
45 municipal development transfer bank may either utilize the State TDR
46 Bank or a county development transfer bank for these purposes,

1 provided that the county in which the municipality is situated has
2 established such a bank.

3 b. Any development transfer bank established by a municipality or
4 county shall be governed by a board of directors comprising five
5 members appointed by the governing body of the municipality or
6 county, as the case may be. The members shall have expertise in either
7 banking, law, land use planning, natural resource protection, historic
8 site preservation or agriculture. For the purposes of P.L. , c.
9 (C.) (pending before the Legislature as this bill) and the "Local
10 Bond Law," N.J.S.40A:2-1 et seq., a purchase by the bank shall be
11 considered an acquisition of lands for public purposes.

12
13 23. (New section) a. A development transfer bank may purchase
14 property in a sending zone if adequate funds have been provided for
15 these purposes and the person from whom the development potential
16 is to be purchased demonstrates possession of marketable title to the
17 property, is legally empowered to restrict the use of the property in
18 conformance with P.L. , c. (C.) (pending before the
19 Legislature as this bill), and certifies that the property is not otherwise
20 encumbered or transferred.

21 b. The development transfer bank may, for the purposes of its own
22 development potential transactions, establish a municipal average of
23 the value of the development potential of all property in a sending
24 zone of a municipality within its jurisdiction, which value shall
25 generally reflect market value prior to the effective date of the
26 development transfer ordinance. The establishment of this municipal
27 average shall not prohibit the purchase of development potential for
28 any price by private sale or transfer, but shall be used only when the
29 development transfer bank itself is purchasing the development
30 potential of property in the sending zone. Several average values in
31 any sending zone may be established for greater accuracy of valuation.

32 c. The development transfer bank may sell, exchange, or otherwise
33 convey the development potential of property that it has purchased or
34 otherwise acquired pursuant to the provisions of P.L. , c. (C.)
35 (pending before the Legislature as this bill), but only in a manner that
36 does not substantially impair the private sale or transfer of
37 development potential.

38 d. When a sending zone includes agricultural land, a development
39 transfer bank shall, when considering the purchase of development
40 potential based upon values derived by municipal averaging, submit the
41 municipal average arrived at pursuant to subsection b. of this section
42 for review and comment to the CADB. The development transfer
43 bank shall coordinate the development transfer program with the
44 farmland preservation programs established pursuant to the
45 "Agriculture Retention and Development Act," P.L.1983, c.32
46 (C.4:1C-11 et al.) and the "Garden State Preservation Trust Act,"

1 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) to the
2 maximum extent practicable and feasible.

3 e. A development transfer bank may apply for funds for the
4 purchase of development potential under the provisions of sections 1
5 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), or any other act
6 providing funds for the purpose of acquiring and developing land for
7 recreation and conservation purposes consistent with the provisions
8 and conditions of those acts.

9 f. A development transfer bank may apply for matching funds for
10 the purchase of development potential under the provisions of the
11 "Garden State Preservation Trust Act," sections 1 through 42 of
12 P.L.1999, c.152 (C.13:8C-1 et seq.) for the purpose of farmland
13 preservation and agricultural development consistent with the
14 provisions and conditions of that act and the "Agriculture Retention
15 and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.). In addition,
16 a development transfer bank may apply to the State Transfer of
17 Development Rights Bank established pursuant to section 3 of
18 P.L.1993, c.339 (C.4:1C-51) for either planning or development
19 potential purchasing funds, or both, as provided pursuant to section 4
20 of P.L.1993, c.339 (C.4:1C-52).

21
22 24. (New section) If the governing body of a county provides for
23 the acquisition of a development easement under the provisions of the
24 "Agriculture Retention and Development Act," P.L.1983, c.32
25 (C.4:1C-11 et al.) or the "Garden State Preservation Trust Act,"
26 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), it may
27 sell the development potential associated with the development
28 easement subject to the terms and conditions of the development
29 transfer ordinance adopted pursuant to P.L. , c. (C.)
30 (pending before the Legislature as this bill); provided that if the
31 development easement was purchased using moneys provided pursuant
32 to the "Garden State Preservation Trust Act," sections 1 through 42
33 of P.L.1999, c.152 (C.13:8C-1 et seq.), a percentage of all revenues
34 generated through the resale of the development potential shall be
35 refunded to the State in an amount equal to the State's percentage
36 contribution to the original development easement purchase.
37 Notwithstanding the foregoing, such refund shall not be paid to the
38 State in the event the State Treasurer determines that such refund
39 would adversely affect the tax-exempt status of any bonds authorized
40 pursuant to the "Garden State Preservation Trust Act," sections 1
41 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.). This repayment
42 shall be made within 90 days after the end of the calendar year in
43 which the sale occurs.

44
45 25. (New section) Agricultural land involved in an approved
46 development transfer ordinance shall be provided the right to farm

1 benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et
2 al.) and other benefits that may be provided pursuant to the
3 "Agriculture Retention and Development Act," P.L.1983, c.32
4 (C.4:1C-11 et seq.).

5
6 26. (New section) a. The governing body of a municipality that
7 adopts a development transfer ordinance shall annually prepare and
8 submit a report on activity undertaken pursuant to the development
9 transfer ordinance to the county planning board.

10 b. The county planning board shall submit copies of these reports
11 along with an analysis of the effectiveness of the ordinances in
12 achieving the purposes of P.L. , c. (C.) (pending before the
13 Legislature as this bill) to the State Planning Commission on July 1 of
14 the third year next following enactment of P.L. , c. (C.)
15 (pending before the Legislature as this bill) and annually thereafter.

16
17 27. (New section) a. Except as provided otherwise pursuant to
18 subsections b. and c. of this section, the provisions of P.L. , c.
19 (C.) (pending before the Legislature as this bill) shall not apply or
20 be construed to nullify any development transfer ordinance adopted by
21 a municipality in Burlington County pursuant to P.L.1989, c.86
22 (C.40:55D-113 et al.) prior to the effective date of P.L. , c.
23 (C.) (pending before the Legislature as this bill).

24 b. On or after the effective date of P.L. , c. (C.) (pending
25 before the Legislature as this bill), any municipality in Burlington
26 County may adopt a development transfer ordinance either pursuant
27 to P.L.1989, c.86 (C.40:55D-113 et al.) or P.L. , c. (C.)
28 (pending before the Legislature as this bill).

29 c. Any municipality in Burlington County may utilize a
30 development transfer bank established by the municipality or county
31 pursuant to P.L. , c. (C.) (pending before the Legislature as
32 this bill), by the municipality or Burlington County pursuant to
33 P.L.1989, c.86 (C.40:55D-113 et al.), or by the State pursuant to
34 P.L.1993, c.339 (C.4:1C-49 et seq.) or P.L. , c. (C.) (pending
35 before the Legislature as this bill).

36
37 28. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read
38 as follows:

39 24. a. Any landowner applying to the board to sell a development
40 easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall
41 offer to sell the development easement at a price which, in the opinion
42 of the landowner, represents a fair value of the development potential
43 of the land for nonagricultural purposes, as determined in accordance
44 with the provisions of [this act] P.L.1983, c.32.

45 b. Any offer shall be reviewed and evaluated by the board and the
46 committee in order to determine the suitability of the land for

1 development easement purchase. Decisions regarding suitability shall
2 be based on the following criteria:

3 (1) Priority consideration shall be given, in any one county, to
4 offers with higher numerical values obtained by applying the following
5 formula:

6
7 nonagricultural - agricultural - landowner's
8 developmental value value asking price

9 -----

10 nonagricultural - agricultural
11 development value value

12

13 (2) The degree to which the purchase would encourage the
14 survivability of the municipally approved program in productive
15 agriculture; and

16 (3) The degree of imminence of change of the land from productive
17 agriculture to nonagricultural use.

18 The board and the committee shall reject any offer for the sale of
19 development easements which is unsuitable according to the above
20 criteria and which has not been approved by the board and the
21 municipality.

22 c. Two independent appraisals paid for by the board shall be
23 conducted for each parcel of land so offered and deemed suitable. The
24 appraisals shall be conducted by independent, professional appraisers
25 selected by the board and the committee from among members of
26 recognized organizations of real estate appraisers. The appraisals shall
27 determine the current overall value of the parcel for nonagricultural
28 purposes, as well as the current market value of the parcel for
29 agricultural purposes. The difference between the two values shall
30 represent an appraisal of the value of the development easement. If
31 Burlington County or a municipality therein has established a
32 development transfer bank pursuant to the provisions of P.L.1989,
33 c.86 (C.40:55D-113 et seq.) or if any county or any municipality in
34 any county has established a development transfer bank pursuant to
35 section 22 of P.L. , c. (C.) (pending before the Legislature
36 as this bill), the municipal average of the value of the development
37 potential of property in a sending zone established by the bank may be
38 the value used by the board in determining the value of the
39 development easement. If a development easement is purchased using
40 moneys appropriated from the fund, the State shall provide no more
41 than 80%, except 100% under emergency conditions specified by the
42 committee pursuant to rules or regulations, of the cost of the
43 appraisals conducted pursuant to this section.

44 d. Upon receiving the results of the appraisals, or in Burlington
45 county or a municipality therein or elsewhere where a municipal
46 average has been established under [P.L.1989, c.86 (C.40:55D-113 et

1 seq.)] subsection c. of this section, upon receiving an application from
2 the landowners, the board and the committee shall compare the
3 appraised value, or the municipal average, as the case may be, and the
4 landowner's offer and, pursuant to the suitability criteria established in
5 subsection b. of this section:

6 (1) Approve the application to sell the development easement and
7 rank the application in accordance with the criteria established in
8 subsection b. of this section; or

9 (2) Disapprove the application, stating the reasons therefor.

10 e. Upon approval by the committee and the board, the secretary is
11 authorized to provide the board, within the limits of funds
12 appropriated therefor, an amount equal to no more than 80%, except
13 100% under emergency conditions specified by the committee
14 pursuant to rules or regulations, of the purchase price of the
15 development easement, as determined pursuant to the provisions of
16 this section. The board shall provide its required share and accept the
17 landowner's offer to sell the development easement. The acceptance
18 shall cite the specific terms, contingencies and conditions of the
19 purchase.

20 f. The landowner shall accept or reject the offer within 30 days of
21 receipt thereof. Any offer not accepted within that time shall be
22 deemed rejected.

23 g. Any landowner whose application to sell a development
24 easement has been rejected for any reason other than insufficient funds
25 may not reapply to sell a development easement on the same land
26 within two years of the original application.

27 h. No development easement shall be purchased at a price greater
28 than the appraised value determined pursuant to subsection c. of this
29 section or the municipal average, as the case may be.

30 i. The appraisals conducted pursuant to this section or the fair
31 market value of land restricted to agricultural use shall not be used to
32 increase the assessment and taxation of agricultural land pursuant to
33 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1
34 et seq.).

35 j. (1) In determining the suitability of land for development
36 easement purchase, the board and the committee may also include as
37 additional factors for consideration the presence of a historic building
38 or structure on the land and the willingness of the landowner to
39 preserve that building or structure, but only if the committee first
40 adopts, pursuant to the "Administrative Procedure Act," P.L.1968,
41 c.410 (C.52:14B-1 et seq.), rules and regulations implementing this
42 subsection. The committee may, by rule or regulation adopted
43 pursuant to the "Administrative Procedure Act," assign any such
44 weight it deems appropriate to be given to these factors.

45 (2) The provisions of paragraph (1) of this subsection may also be
46 applied in determining the suitability of land for fee simple purchase

1 for farmland preservation purposes as authorized by P.L.1983, c.31
2 (C.4:1C-1 et seq.), P.L.1983, c.32 (C.4:1C-11 et seq.), and P.L.1999,
3 c.152 (C.13:8C-1 et seq.).

4 (3) (a) For the purposes of paragraph (1) of this subsection:
5 "historic building or structure" means the same as that term is defined
6 pursuant to subsection c. of section 2 of P.L.2001, c.405
7 (C.13:8C-40.2).

8 (b) For the purposes of paragraph (2) of this subsection, "historic
9 building or structure" means the same as that term is defined pursuant
10 to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

11 (cf: P.L.2001, c.405, s.3)

12

13 29. Section 2 of P.L.1993, c.339 (C.4:1C-50) is amended to read
14 as follows:

15 2. As used in this act:

16 "Board" means the board of directors of the State Transfer of
17 Development Rights Bank established pursuant to section 3 of [this
18 act] P.L.1993, c.339 (C.4:1C-51);

19 "Development potential" means the maximum number of dwelling
20 units or square feet of nonresidential floor area that may be
21 constructed on a specified lot or in a specified zone under the master
22 plan and land use regulations in effect on the date of the adoption of
23 the development transfer ordinance, and in accordance with
24 recognized environmental constraints;

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

29 "Instrument" means the easement, credit, or other deed restriction
30 used to record a development transfer; and

31 "State Transfer of Development Rights Bank," "bank" or "State
32 TDR Bank" means the bank established pursuant to section 3 of [this
33 act, and shall constitute the development potential transfer bank for
34 the purposes of P.L.1989, c.183] P.L.1993, c.339 (C.4:1C-51).

35 (cf: P.L.1993, c.339, s.2)

36

37 30. Section 4 of P.L.1993, c.339 (C.4:1C-52) is amended to read
38 as follows:

39 4. The board shall have the following powers:

40 a. To purchase, or to provide matching funds for the purchase of
41 80% of, the value of development potential and to otherwise facilitate
42 development transfers, from the owner of record of the property from
43 which the development potential is to be transferred or from any
44 person, or entity, public or private, holding the interest in development
45 potential that is subject to development transfer; provided that, in the
46 case of providing matching funds for the purchase of 80% of the value

1 of development potential, the remaining 20% of that value is
2 contributed by the affected municipality or county, or both, after
3 public notice thereof in the New Jersey Register and in one newspaper
4 of general circulation in the area affected by the purchase. The
5 remaining 20% of the value of the development potential to be
6 contributed by the affected municipality or county, or both, to match
7 funds provided by the board, may be obtained by purchase from, or
8 donation by, the owner of record of the property from which the
9 development potential is to be transferred or from any person, or
10 entity, public or private, holding the interest in development potential
11 that is subject to development transfer. The value of development
12 potential may be determined by either appraisal, municipal averaging
13 based upon appraisal data, or by a formula supported by appraisal
14 data. The board may also engage in development transfer by sale,
15 exchange, or other method of conveyance, provided that in doing so,
16 the board shall not substantially impair the private sale, exchange or
17 other method of conveyance of development potential. The board may
18 not, nor shall anything in this act be construed as permitting the board
19 to, engage in development transfer from one municipality to another,
20 which transfer is not in accordance with the ordinances of both
21 municipalities;

22 b. To adopt and, from time to time, amend or repeal suitable
23 bylaws for the management of its affairs;

24 c. To adopt and use an official seal and alter that seal at its
25 pleasure;

26 d. To apply for, receive, and accept, from any federal, State, or
27 other public or private source, grants or loans for, or in aid of, the
28 board's authorized purposes;

29 e. To enter into any agreement or contract, execute any legal
30 document, and perform any act or thing necessary, convenient, or
31 desirable for the purposes of the board or to carry out any power
32 expressly given in this act;

33 f. To adopt, pursuant to the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary
35 to implement the provisions of this act;

36 g. To call to its assistance and avail itself of the services of the
37 employees of any State, county, or municipal department, board, or
38 commission, or agency as may be required and made available for
39 these purposes;

40 h. To retain such staff as may be necessary in the career service
41 and to appoint an executive director thereof. The executive director
42 shall serve as a member of the senior executive or unclassified service
43 and may be appointed without regard to the provisions of Title 11A of
44 the New Jersey Statutes;

45 i. To review and analyze innovative techniques that may be
46 employed to maximize the total acreage reserved through the use of

1 perpetual easements;

2 j. To provide, through the State TDR Bank, a financial guarantee
3 with respect to any loan to be extended to any person that is secured
4 using development potential as collateral for the loan. Financial
5 guarantees provided under this act shall be in accordance with
6 procedures, terms and conditions, and requirements, including rights
7 and obligations of the parties in the event of default on any loan
8 secured in whole or in part using development potential as collateral,
9 to be established by rule or regulation adopted by the board pursuant
10 to the "Administrative Procedure Act";

11 k. To enter into agreement with the State Agriculture Development
12 Committee for the purpose of acquiring development potential through
13 the acquisition of development easements on farmland so that the
14 board may utilize the existing processes, procedures, and capabilities
15 of the State Agriculture Development Committee as necessary and
16 appropriate to accomplish the goals and objectives of the board as
17 provided for pursuant to this act;

18 l. To enter into agreements with other State agencies or entities
19 providing services and programs authorized by law so that the board
20 may utilize the existing processes, procedures, and capabilities of those
21 other agencies or entities as necessary and appropriate to accomplish
22 the goals and objectives of the board as provided for pursuant to this
23 act; [and]

24 m. To provide planning assistance grants to municipalities [that
25 have adopted viable development transfer ordinances, as determined
26 by the board,] for up to 50% of the cost of [planning associated with
27 such an ordinance] preparing, for development potential transfer
28 purposes, a utility service plan element or a development transfer plan
29 element of a master plan pursuant to section 19 of P.L.1975, c.291
30 (C.40:55D-28), a real estate market analysis required pursuant to
31 section 12 of P.L. , c. (C.) (pending before the
32 Legislature as this bill), and a capital improvement program pursuant
33 to section 20 of P.L.1975, c.291 (C.40:55D-29) and incurred by a
34 municipality, or [\$10,000] \$40,000, whichever is less, which grants
35 shall be made utilizing moneys deposited into the bank pursuant to
36 section 8 of [this act] P.L.1993, c.339;

37 n. To provide funding in the form of grants or loans for the
38 purchase of development potential to development transfer banks
39 established by a municipality or county pursuant to P.L.1989, c.86
40 (C.40:55D-113 et seq.) or section 22 of P.L. , c. (C.)
41 (pending before the Legislature as this bill); and

42 o. To serve as a development transfer bank designated by the
43 governing body of a municipality or county pursuant to section 22 of
44 P.L. , c. (C.) (pending before the Legislature as this
45 bill).

46 (cf: P.L.1993, c.339, s.4)

1 31. Section 8 of P.L.1993, c.339 is amended to read as follows:

2 8. a. There is appropriated to the State Transfer of Development
3 Rights Bank from the "1989 Development Potential Transfer Bank
4 Fund" established pursuant to section 23 of P.L.1989, c.183, the sum
5 of \$20,000,000 for deposit into the State TDR Bank, which shall be
6 expended in accordance with the provisions of ~~[this act] P.L.1993,~~
7 ~~c.339 (C.4:1C-49 et al.)~~

8 b. Of the moneys appropriated pursuant to subsection a. of this
9 section, not more than \$400,000 may be expended in total for
10 administrative costs, staff assistance or professional services within the
11 period of four years from the effective date of ~~[this act] P.L.1993,~~
12 ~~c.339 (C.4:1C-49 et al.)~~, and not more than ~~[\$400,000] \$1,500,000~~
13 may be expended for the purposes of subsection m. of section 4 of
14 ~~[this act] P.L.1993, c.339 (C.4:1C-52)~~.

15 (cf: P.L.1993, c.339, s.8)

16

17 32. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to read
18 as follows:

19 3. For the purposes of this act, unless the context clearly indicates
20 a different meaning:

21 The term "shall" indicates a mandatory requirement, and the term
22 "may" indicates a permissive action.

23 "Administrative officer" means the clerk of the municipality, unless
24 a different municipal official or officials are designated by ordinance
25 or statute.

26 "Agricultural land" means "farmland" as defined pursuant to section
27 3 of P.L.1999, c.152 (C.13:8C-3).

28 "Applicant" means a developer submitting an application for
29 development.

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

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

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

42 "Building" means a combination of materials to form a construction
43 adapted to permanent, temporary, or continuous occupancy and having
44 a roof.

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

1 "Capital improvement" means a governmental acquisition of real
2 property or major construction project.

3 "Circulation" means systems, structures and physical improvements
4 for the movement of people, goods, water, air, sewage or power by
5 such means as streets, highways, railways, waterways, towers,
6 airways, pipes and conduits, and the handling of people and goods by
7 such means as terminals, stations, warehouses, and other storage
8 buildings or transshipment points.

9 "Common open space" means an open space area within or related
10 to a site designated as a development, and designed and intended for
11 the use or enjoyment of residents and owners of the development.
12 Common open space may contain such complementary structures and
13 improvements as are necessary and appropriate for the use or
14 enjoyment of residents and owners of the development.

15 "Conditional use" means a use permitted in a particular zoning
16 district only upon a showing that such use in a specified location will
17 comply with the conditions and standards for the location or operation
18 of such use as contained in the zoning ordinance, and upon the
19 issuance of an authorization therefor by the planning board.

20 "Conventional" means development other than planned
21 development.

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

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

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

33 (cf: P.L.1991, c.412, s.1)

34

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

37 3.1. "Days" means calendar days.

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

40 "Developer" means the legal or beneficial owner or owners of a lot
41 or of any land proposed to be included in a proposed development,
42 including the holder of an option or contract to purchase, or other
43 person having an enforceable proprietary interest in such land.

44 "Development" means the division of a parcel of land into two or
45 more parcels, the construction, reconstruction, conversion, structural
46 alteration, relocation or enlargement of any building or other structure,

1 or of any mining excavation or landfill, and any use or change in the
2 use of any building or other structure, or land or extension of use of
3 land, for which permission may be required pursuant to this act.

4 "Development potential" means the maximum number of dwelling
5 units or square feet of nonresidential floor area that may be
6 constructed on a specified lot or in a specified zone under the master
7 plan and land use regulations in effect on the date of the adoption of
8 the development transfer ordinance, and in accordance with
9 recognized environmental constraints.

10 "Development regulation" means a zoning ordinance, subdivision
11 ordinance, site plan ordinance, official map ordinance or other
12 municipal regulation of the use and development of land, or
13 amendment thereto adopted and filed pursuant to this act.

14 "Development transfer" or "development potential transfer" means
15 the conveyance of development potential, or the permission for
16 development, from one or more lots to one or more other lots by deed,
17 easement, or other means as authorized by ordinance.

18 "Development transfer bank" means a development transfer bank
19 established pursuant to section 22 of P.L. , c. (C.) (pending
20 before the Legislature as this bill) or the State TDR Bank.

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

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

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

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

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

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

45 "Governing body" means the chief legislative body of the
46 municipality. In municipalities having a board of public works,

1 "governing body" means such board.

2 "Historic district" means one or more historic sites and intervening
3 or surrounding property significantly affecting or affected by the
4 quality and character of the historic site or sites.

5 "Historic site" means any real property, man-made structure,
6 natural object or configuration or any portion or group of the
7 foregoing of historical, archeological, cultural, scenic or architectural
8 significance.

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

11 "Interested party" means: (a) in a criminal or quasi-criminal
12 proceeding, any citizen of the State of New Jersey; and (b) in the case
13 of a civil proceeding in any court or in an administrative proceeding
14 before a municipal agency, any person, whether residing within or
15 without the municipality, whose right to use, acquire, or enjoy
16 property is or may be affected by any action taken under this act, or
17 whose rights to use, acquire, or enjoy property under this act, or under
18 any other law of this State or of the United States have been denied,
19 violated or infringed by an action or a failure to act under this act.

20 "Land" includes improvements and fixtures on, above or below the
21 surface.

22 "Local utility" means any sewerage authority created pursuant to
23 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.);
24 any utilities authority created pursuant to the "municipal and county
25 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any
26 utility, authority, commission, special district or other corporate entity
27 not regulated by the Board of Regulatory Commissioners under Title
28 48 of the Revised Statutes that provides gas, electricity, heat, power,
29 water or sewer service to a municipality or the residents thereof.

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

33 (cf: P.L.1991, c.412, s.2)

34

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

37 3.2. "Maintenance guarantee" means any security which may be
38 accepted by a municipality for the maintenance of any improvements
39 required by this act, including but not limited to surety bonds, letters
40 of credit under the circumstances specified in section 16 of P.L.1991,
41 c.256 (C.40:55D-53.5), and cash.

42 "Major subdivision" means any subdivision not classified as a minor
43 subdivision.

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

1 "Mayor" means the chief executive of the municipality, whatever his
2 official designation may be, except that in the case of municipalities
3 governed by municipal council and municipal manager the term
4 "mayor" shall not mean the "municipal manager" but shall mean the
5 mayor of such municipality.

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

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

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

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

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

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

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

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

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

46 "Official county map" means the map, with changes and additions

1 thereto, adopted and established, from time to time, by resolution of
2 the board of chosen freeholders of the county pursuant to R.S.40:27-5.

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

5 "Offsite" means located outside the lot lines of the lot in question
6 but within the property, of which the lot is a part, which is the subject
7 of a development application or the closest half of the street or
8 right-of-way abutting the property of which the lot is a part.

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

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

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

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

24 (cf: P.L.1998, c.95, s.1)

25

26 35. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to
27 read as follows:

28 3.3. "Party immediately concerned" means for purposes of notice
29 any applicant for development, the owners of the subject property and
30 all owners of property and government agencies entitled to notice
31 under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

32 "Performance guarantee" means any security, which may be
33 accepted by a municipality, including but not limited to surety bonds,
34 letters of credit under the circumstances specified in section 16 of
35 P.L.1991, c.256 (C.40:55D-53.5), and cash.

36 "Planned commercial development" means an area of a minimum
37 contiguous or noncontiguous size as specified by ordinance to be
38 developed according to a plan as a single entity containing one or
39 more structures with appurtenant common areas to accommodate
40 commercial or office uses or both and any residential and other uses
41 incidental to the predominant use as may be permitted by ordinance.

42 "Planned development" means planned unit development, planned
43 unit residential development, residential cluster, planned commercial
44 development or planned industrial development.

45 "Planned industrial development" means an area of a minimum
46 contiguous or noncontiguous size as specified by ordinance to be

1 developed according to a plan as a single entity containing one or
2 more structures with appurtenant common areas to accommodate
3 industrial uses and any other uses incidental to the predominant use as
4 may be permitted by ordinance.

5 "Planned unit development" means an area with a specified
6 minimum contiguous or noncontiguous acreage of 10 acres or more to
7 be developed as a single entity according to a plan, containing one or
8 more residential clusters or planned unit residential developments and
9 one or more public, quasi-public, commercial or industrial areas in
10 such ranges of ratios of nonresidential uses to residential uses as shall
11 be specified in the zoning ordinance.

12 "Planned unit residential development" means an area with a
13 specified minimum contiguous or noncontiguous acreage of five acres
14 or more to be developed as a single entity according to a plan
15 containing one or more residential clusters, which may include
16 appropriate commercial, or public or quasi-public uses all primarily for
17 the benefit of the residential development.

18 "Planning board" means the municipal planning board established
19 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

20 "Plat" means a map or maps of a subdivision or site plan.

21 "Preliminary approval" means the conferral of certain rights
22 pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46;
23 C.40:55D-48; and C.40:55D-49) prior to final approval after specific
24 elements of a development plan have been agreed upon by the planning
25 board and the applicant.

26 "Preliminary floor plans and elevations" means architectural
27 drawings prepared during early and introductory stages of the design
28 of a project illustrating in a schematic form, its scope, scale and
29 relationship to its site and immediate environs.

30 "Public areas" means (1) public parks, playgrounds, trails, paths and
31 other recreational areas; (2) other public open spaces; (3) scenic and
32 historic sites; and (4) sites for schools and other public buildings and
33 structures.

34 "Public development proposal" means a master plan, capital
35 improvement program or other proposal for land development adopted
36 by the appropriate public body, or any amendment thereto.

37 "Public drainage way" means the land reserved or dedicated for the
38 installation of storm water sewers or drainage ditches, or required
39 along a natural stream or watercourse for preserving the biological as
40 well as drainage function of the channel and providing for the flow of
41 water to safeguard the public against flood damage, sedimentation and
42 erosion and to assure the adequacy of existing and proposed culverts
43 and bridges, to induce water recharge into the ground where practical,
44 and to lessen nonpoint pollution.

45 "Public open space" means an open space area conveyed or
46 otherwise dedicated to a municipality, municipal agency, board of

1 education, State or county agency, or other public body for
2 recreational or conservational uses.

3 "Public utility" means any public utility regulated by the Board of
4 Regulatory Commissioners and defined pursuant to R.S.48:2-13.

5 "Quorum" means the majority of the full authorized membership of
6 a municipal agency.

7 "Receiving zone" means an area or areas designated in a master
8 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
9 (C.40:55D-1 et seq.), within which development may be increased, and
10 which is otherwise consistent with the provisions of section 9 of
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12 "Residential cluster" means a contiguous or noncontiguous area to
13 be developed as a single entity according to a plan containing
14 residential housing units which have a common or public open space
15 area as an appurtenance.

16 "Residential density" means the number of dwelling units per gross
17 acre of residential land area including streets, easements and open
18 space portions of a development.

19 "Resubdivision" means (1) the further division or relocation of lot
20 lines of any lot or lots within a subdivision previously made and
21 approved or recorded according to law or (2) the alteration of any
22 streets or the establishment of any new streets within any subdivision
23 previously made and approved or recorded according to law, but does
24 not include conveyances so as to combine existing lots by deed or
25 other instrument.

26 (cf: P.L.1995, c.364, s.1)

27

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

30 3.4 "Sedimentation" means the deposition of soil that has been
31 transported from its site of origin by water, ice, wind, gravity or other
32 natural means as a product of erosion.

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

38 "Site plan" means a development plan of one or more lots on which
39 is shown (1) the existing and proposed conditions of the lot, including
40 but not necessarily limited to topography, vegetation, drainage, flood
41 plains, marshes and waterways, (2) the location of all existing and
42 proposed buildings, drives, parking spaces, walkways, means of
43 ingress and egress, drainage facilities, utility services, landscaping,
44 structures and signs, lighting, screening devices, and (3) any other
45 information that may be reasonably required in order to make an
46 informed determination pursuant to an ordinance requiring review and

1 approval of site plans by the planning board adopted pursuant to
2 article 6 of this act.

3 "Standards of performance" means standards (1) adopted by
4 ordinance pursuant to subsection 52d. regulating noise levels, glare,
5 earthborne or sonic vibrations, heat, electronic or atomic radiation,
6 noxious odors, toxic matters, explosive and inflammable matters,
7 smoke and airborne particles, waste discharge, screening of unsightly
8 objects or conditions and such other similar matters as may be
9 reasonably required by the municipality or (2) required by applicable
10 Federal or State laws or municipal ordinances.

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

14 "Street" means any street, avenue, boulevard, road, parkway,
15 viaduct, drive or other way (1) which is an existing State, county or
16 municipal roadway, or (2) which is shown upon a plat heretofore
17 approved pursuant to law, or (3) which is approved by official action
18 as provided by this act, or (4) which is shown on a plat duly filed and
19 recorded in the office of the county recording officer prior to the
20 appointment of a planning board and the grant to such board of the
21 power to review plats; and includes the land between the street lines,
22 whether improved or unimproved, and may comprise pavement,
23 shoulders, gutters, curbs, sidewalks, parking areas and other areas
24 within the street lines.

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

28 "Subdivision" means the division of a lot, tract or parcel of land
29 into two or more lots, tracts, parcels or other divisions of land for sale
30 or development. The following shall not be considered subdivisions
31 within the meaning of this act, if no new streets are created: (1)
32 divisions of land found by the planning board or subdivision committee
33 thereof appointed by the chairman to be for agricultural purposes
34 where all resulting parcels are 5 acres or larger in size, (2) divisions of
35 property by testamentary or intestate provisions, (3) divisions of
36 property upon court order, including but not limited to judgments of
37 foreclosure, (4) consolidation of existing lots by deed or other
38 recorded instrument and (5) the conveyance of one or more adjoining
39 lots, tracts or parcels of land, owned by the same person or persons
40 and all of which are found and certified by the administrative officer
41 to conform to the requirements of the municipal development
42 regulations and are shown and designated as separate lots, tracts or
43 parcels on the tax map or atlas of the municipality. The term
44 "subdivision" shall also include the term "resubdivision."

45 "Transcript" means a typed or printed verbatim record of the
46 proceedings or reproduction thereof.

1 "Variance" means permission to depart from the literal requirements
2 of a zoning ordinance pursuant to section 47 and subsection 29.2b.,
3 57c. and 57d. of this act.

4 "Zoning permit" means a document signed by the administrative
5 officer (1) which is required by ordinance as a condition precedent to
6 the commencement of a use or the erection, construction,
7 reconstruction, alteration, conversion or installation of a structure or
8 building and (2) which acknowledges that such use, structure or
9 building complies with the provisions of the municipal zoning
10 ordinance or variance therefrom duly authorized by a municipal agency
11 pursuant to sections 47 and 57 of this act.

12 (cf: P.L.1979, c.216, s.4)

13
14 37. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
15 read as follows:

16 19. Preparation; contents; modification.

17 a. The planning board may prepare and, after public hearing, adopt
18 or amend a master plan or component parts thereof, to guide the use
19 of lands within the municipality in a manner which protects public
20 health and safety and promotes the general welfare.

21 b. The master plan shall generally comprise a report or statement
22 and land use and development proposals, with maps, diagrams and
23 text, presenting, at least the following elements (1) and (2) and, where
24 appropriate, the following elements (3) through [(13)] (14) :

25 (1) A statement of objectives, principles, assumptions, policies and
26 standards upon which the constituent proposals for the physical,
27 economic and social development of the municipality are based;

28 (2) A land use plan element (a) taking into account and stating its
29 relationship to the statement provided for in paragraph (1) hereof, and
30 other master plan elements provided for in paragraphs (3) through
31 [(13)] (14) hereof and natural conditions, including, but not
32 necessarily limited to, topography, soil conditions, water supply,
33 drainage, flood plain areas, marshes, and woodlands; (b) showing the
34 existing and proposed location, extent and intensity of development of
35 land to be used in the future for varying types of residential,
36 commercial, industrial, agricultural, recreational, educational and other
37 public and private purposes or combination of purposes; and stating
38 the relationship thereof to the existing and any proposed zone plan and
39 zoning ordinance; and (c) showing the existing and proposed location
40 of any airports and the boundaries of any airport safety zones
41 delineated pursuant to the "Air Safety and Zoning Act of 1983,"
42 P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of
43 the standards of population density and development intensity
44 recommended for the municipality;

45 (3) A housing plan element pursuant to section 10 of P.L.1985,
46 c.222 (C.52:27D-310), including, but not limited to, residential

1 standards and proposals for the construction and improvement of
2 housing;

3 (4) A circulation plan element showing the location and types of
4 facilities for all modes of transportation required for the efficient
5 movement of people and goods into, about, and through the
6 municipality, taking into account the functional highway classification
7 system of the Federal Highway Administration and the types,
8 locations, conditions and availability of existing and proposed
9 transportation facilities, including air, water, road and rail;

10 (5) A utility service plan element analyzing the need for and
11 showing the future general location of water supply and distribution
12 facilities, drainage and flood control facilities, sewerage and waste
13 treatment, solid waste disposal and provision for other related utilities,
14 and including any storm water management plan required pursuant to
15 the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.). If a
16 municipality prepares a utility service plan element as a condition for
17 adopting a development transfer ordinance pursuant to subsection c.
18 of section 4 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), the plan element shall address the provision of
20 utilities in the receiving zone as provided thereunder;

21 (6) A community facilities plan element showing the existing and
22 proposed location and type of educational or cultural facilities, historic
23 sites, libraries, hospitals, firehouses, police stations and other related
24 facilities, including their relation to the surrounding areas;

25 (7) A recreation plan element showing a comprehensive system of
26 areas and public sites for recreation;

27 (8) A conservation plan element providing for the preservation,
28 conservation, and utilization of natural resources, including, to the
29 extent appropriate, energy, open space, water supply, forests, soil,
30 marshes, wetlands, harbors, rivers and other waters, fisheries,
31 endangered or threatened species wildlife and other resources, and
32 which systemically analyzes the impact of each other component and
33 element of the master plan on the present and future preservation,
34 conservation and utilization of those resources;

35 (9) An economic plan element considering all aspects of economic
36 development and sustained economic vitality, including (a) a
37 comparison of the types of employment expected to be provided by the
38 economic development to be promoted with the characteristics of the
39 labor pool resident in the municipality and nearby areas and (b) an
40 analysis of the stability and diversity of the economic development to
41 be promoted;

42 (10) A historic preservation plan element: (a) indicating the
43 location and significance of historic sites and historic districts; (b)
44 identifying the standards used to assess worthiness for historic site or
45 district identification; and (c) analyzing the impact of each component
46 and element of the master plan on the preservation of historic sites and

1 districts;

2 (11) Appendices or separate reports containing the technical
3 foundation for the master plan and its constituent elements;

4 (12) A recycling plan element which incorporates the State
5 Recycling Plan goals, including provisions for the collection,
6 disposition and recycling of recyclable materials designated in the
7 municipal recycling ordinance, and for the collection, disposition and
8 recycling of recyclable materials within any development proposal for
9 the construction of 50 or more units of single-family residential
10 housing or 25 or more units of multi-family residential housing and any
11 commercial or industrial development proposal for the utilization of
12 1,000 square feet or more of land; [and]

13 (13) A farmland preservation plan element, which shall include: an
14 inventory of farm properties and a map illustrating significant areas of
15 agricultural land; a statement showing that municipal ordinances
16 support and promote agriculture as a business; and a plan for
17 preserving as much farmland as possible in the short term by
18 leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et
19 al.) through a variety of mechanisms including, but not limited to,
20 utilizing option agreements, installment purchases, and encouraging
21 donations of permanent development easements ; and

22 (14) A development transfer plan element which sets forth the
23 public purposes, the locations of sending and receiving zones and the
24 technical details of a development transfer program based on the
25 provisions of section 5 of P.L. , c. (C.) (pending before the
26 Legislature as this bill).

27 c. The master plan and its plan elements may be divided into
28 subplans and subplan elements projected according to periods of time
29 or staging sequences.

30 d. The master plan shall include a specific policy statement
31 indicating the relationship of the proposed development of the
32 municipality, as developed in the master plan to (1) the master plans
33 of contiguous municipalities, (2) the master plan of the county in
34 which the municipality is located, (3) the State Development and
35 Redevelopment Plan adopted pursuant to the "State Planning Act,"
36 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
37 (4) the district solid waste management plan required pursuant to the
38 provisions of the "Solid Waste Management Act," P.L.1970, c.39
39 (C.13:1E-1 et seq.) of the county in which the municipality is located.
40 (cf: P.L.1999, c.180, s.2)

41

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

44 20. a. The governing body may authorize the planning board from
45 time to time to prepare a program of municipal capital improvement
46 projects projected over a term of at least 6 years, and amendments

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

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

22 Any such program shall include an estimate of the displacement of
23 persons and establishments caused by each recommended project.

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

32 c. In addition to all of the other requirements of this section, any
33 municipality that intends to provide for the transfer of development
34 within its jurisdiction pursuant to section 3 of P.L. , c. (C.)
35 (pending before the Legislature as this bill) shall include within its
36 capital improvement program provision for those capital projects to be
37 undertaken in the receiving zone or zones required as a condition for
38 adopting a development transfer ordinance pursuant to subsection b.
39 of section 4 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 (cf: P.L.1975, c.291, s.20)

42

43 39. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to
44 read as follows:

45 52. A zoning ordinance may:

46 a. Limit and restrict buildings and structures to specified districts

1 and regulate buildings and structures according to their type and the
2 nature and extent of their use, and regulate the nature and extent of
3 the use of land for trade, industry, residence, open space or other
4 purposes.

5 b. Regulate the bulk, height, number of stories, orientation, and
6 size of buildings and the other structures; the percentage of lot or
7 development area that may be occupied by structures; lot sizes and
8 dimensions; and for these purposes may specify floor area ratios and
9 other ratios and regulatory techniques governing the intensity of land
10 use and the provision of adequate light and air, including, but not
11 limited to the potential for utilization of renewable energy sources.

12 c. Provide districts for planned developments; provided that an
13 ordinance providing for approval of subdivisions and site plans by the
14 planning board has been adopted and incorporates therein the
15 provisions for such planned developments in a manner consistent with
16 article 6 of [this act] P.L.1975, c.291 (C.40:55D-37 et seq.). The
17 zoning ordinance shall establish standards governing the type and
18 density, or intensity of land use, in a planned development. Said
19 standards shall take into account that the density, or intensity of land
20 use, otherwise allowable may not be appropriate for a planned
21 development. The standards may vary the type and density, or
22 intensity of land use, otherwise applicable to the land within a planned
23 development in consideration of the amount, location and proposed
24 use of open space; the location and physical characteristics of the site
25 of the proposed planned development; and the location, design and
26 type of dwelling units and other uses. Such standards may provide for
27 the clustering of development between noncontiguous parcels and
28 may, in order to encourage the flexibility of density, intensity of land
29 uses, design and type, authorize a deviation in various clusters from
30 the density, or intensity of use, established for an entire planned
31 development. The standards and criteria by which the design, bulk and
32 location of buildings are to be evaluated shall be set forth in the zoning
33 ordinance and all standards and criteria for any feature of a planned
34 development shall be set forth in such ordinance with sufficient
35 certainty to provide reasonable criteria by which specific proposals for
36 planned development can be evaluated.

37 d. Establish, for particular uses or classes of uses, reasonable
38 standards of performance and standards for the provision of adequate
39 physical improvements including, but not limited to, off-street parking
40 and loading areas, marginal access roads and roadways, other
41 circulation facilities and water, sewerage and drainage facilities;
42 provided that section 41 of [this act] P.L.1975, c.291 (C.40:55D-53)
43 shall apply to such improvements.

44 e. Designate and regulate areas subject to flooding (1) pursuant to
45 P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary
46 in the absence of appropriate flood hazard area designations pursuant

1 to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations
2 pursuant to P.L.1972, c.185 or minimum standards for local flood
3 fringe area regulation pursuant to P.L.1972, c.185.

4 f. Provide for conditional uses pursuant to section 54 of [this act]
5 P.L.1975, c.291 (C.40:55D-67).

6 g. Provide for senior citizen community housing.

7 h. Require as a condition for any approval which is required
8 pursuant to such ordinance and the provisions of this chapter, that no
9 taxes or assessments for local improvements are due or delinquent on
10 the property for which any application is made.

11 i. Provide for historic preservation pursuant to section 5 of
12 P.L.1991 c.199 (C.40:55D-65.1).

13 j. Provide for sending and receiving zones for a development
14 transfer program established pursuant to P.L. , c. (C.) (pending
15 before the Legislature as this bill).

16 (cf: P.L.1995, c.364, s.2)

17

18 40. This act shall take effect 180 days next following enactment,
19 except that section 12 shall take effect immediately.

20

21

22 STATEMENT

23

24 This bill would establish a Statewide transfer of development rights
25 (TDR) program, similar to the current Burlington County pilot TDR
26 program. It is the Legislature's intention in enacting this legislation to
27 create a mechanism to accommodate growth and preserve open space
28 and agricultural lands in a manner that is fair and equitable for all
29 landowners.

30 A TDR program involves the consideration of how the
31 municipality's future growth, capacity and preservation needs are to be
32 directed into sending and receiving zones. Specifically, this
33 consideration is to be reflected in a series of planning documents
34 which a municipality is required to adopt in order to effectuate a TDR
35 program. These documents include a utility service plan element and
36 development transfer plan element of the master plan, a capital
37 improvement program, a real estate market analysis, and a
38 development transfer ordinance which effectuates the plans.

39 The bill is designed to grant municipalities the flexibility to adopt
40 a TDR program that meets their specific growth and preservation
41 needs, subject to county planning board approval, in order to assure
42 that regional planning needs are taken into consideration.

43 The specific provisions of the bill are summarized below.

1 **Requirements**

2

3 The bill establishes a series of conditions that a municipality is
4 required to fulfill in order to be eligible to adopt a TDR ordinance.
5 Prior to the adoption or amendment of any development transfer
6 ordinance, a municipality shall have adopted a utility service plan
7 element, development transfer plan element and capital improvement
8 program under the "Municipal Land Use Law," as amended by this bill.

9 Additionally, the municipality's initial petition for endorsement of
10 its master plan by the State Planning Commission shall have been
11 approved. Prior to the adoption of such an ordinance, the municipal
12 planning board shall have conducted a real estate market analysis
13 which examines the relationship between the development rights
14 anticipated to be generated in the sending zones and the capacity of
15 designated receiving zones to accommodate the necessary
16 development.

17 The municipality shall adopt a development transfer plan element
18 of the master plan that includes:

19

20 * an estimate of the anticipated population and economic growth
21 in the municipality for the succeeding 10 years;

22 * the identification and description of all prospective sending and
23 receiving zones;

24 * an analysis of how the anticipated population growth in the
25 municipality is to be accommodated within the municipality in
26 general, and the receiving zone or zones in particular;

27 * an estimate of existing and proposed infrastructure of the
28 proposed receiving zone;

29 * a procedure and method for issuing the instruments necessary
30 to convey the development potential from the sending zone to
31 the receiving zone; and

32 * explicit planning objectives and design standards to govern the
33 review of applications for development in the receiving zone in
34 order to facilitate their review by the approving authority.

35

36 The absence of plan endorsement or the failure to have transferred
37 a sufficient degree of development potential within five years as
38 required pursuant to section 20 of the bill, shall constitute a rebuttable
39 presumption that the development transfer ordinance is no longer
40 reasonable.

41

42 **Sending and Receiving Zones**

43

44 The bill establishes the criteria governing which lands may be
45 included in sending zones, where development is to be restricted, and
46 receiving zones, where development is to be transferred.

1 **Sending Zone Requirements**

2

3 Sending zones shall be composed predominantly of land upon which
4 development is restricted or upon which development has been limited
5 because of the particular features of the land in question. The bill
6 provides examples, which include agricultural, woodland, floodplain,
7 wetlands, threatened or endangered species habitat, steeped sloped
8 land or other lands on which development activities are restricted by
9 federal, State or local laws or regulations, land substantially improved
10 or developed in a manner which presents a unique and distinctive
11 aesthetic, architectural or historical point of interest or other low
12 density improved or unimproved areas.

13

14 **Receiving Zone Requirements**

15

16 * The receiving zone shall be appropriate and suitable for
17 development and shall be at least sufficient to accommodate all
18 of the development potential of the sending zone.

19 * All infrastructure necessary to achieve the development
20 potential of the receiving zone shall either exist or be scheduled
21 to be provided.

22 * Any development to be undertaken in a receiving zone utilizing
23 density increases shall require the use of appropriate
24 instruments of transfer.

25

26 **Review of TDR Ordinance**

27

28 A TDR ordinance shall first go through a review by the county
29 planning board for an evaluation of:

30

31 * consistency with the county master plan;

32 * support of regional objectives for agricultural preservation,
33 natural resource management and protection, historic or
34 architectural conservation;

35 * consistency with reasonable population and economic forecasts
36 for the county; and

37 * sufficiency of the receiving zone to accommodate the
38 development potential that may be transferred from sending
39 zones and a reasonable assurance of marketability of any
40 instruments of transfer that may be created.

41

42 If the county does not recommend enactment and cannot resolve its
43 issues with the municipality, the municipality may petition the Office
44 of Smart Growth for a final determination.

1 **TDR Bank**

2

3 The bill authorizes a municipality or county to establish a TDR bank
4 for the purpose of facilitating the buying and selling of development
5 credits. Alternatively, a municipality or county may opt to use the
6 State TDR Bank for these purposes. The bank may purchase credits
7 from sending areas and apply for funds to purchase those credits. The
8 actions of the bank may not impair the private sale or transfer of
9 development potential.

10

11 **Existing Burlington County Program**

12

13 The bill grandfathers the existing Burlington County TDR Program
14 and authorizes Burlington County municipalities going forward to
15 either continue to utilize the existing pilot program or the Statewide
16 program being created by this bill. Additionally, Burlington County
17 municipalities may continue to utilize the Burlington County TDR
18 bank, the State TDR bank, or establish their own individual TDR
19 banks as provided in this bill.

20

21

22

23

24 _____

24 Extends authority for municipalities to establish transfer of
25 development rights programs and sets forth parameters for creation
26 thereof.

ASSEMBLY, No. 2480

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 4, 2004

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

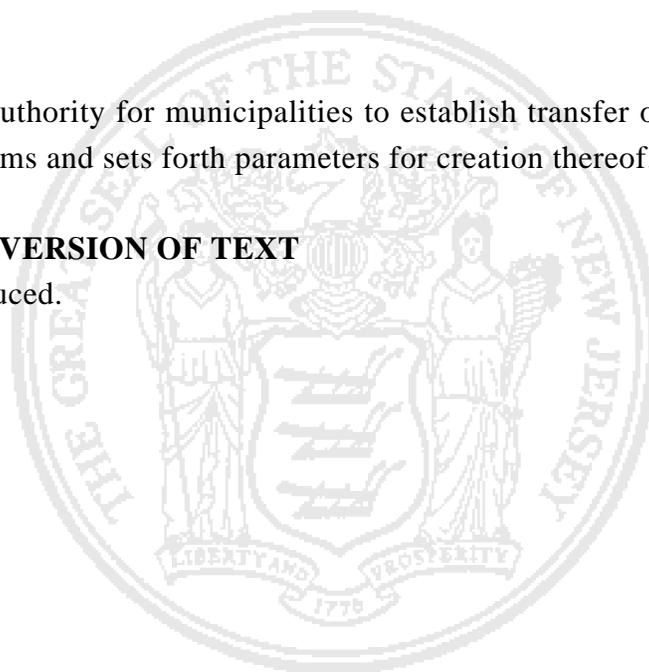
**Assemblymen Conaway, Panter, Morgan, Chivukula, Senators Adler,
Bark and Turner**

SYNOPSIS

Extends authority for municipalities to establish transfer of development rights programs and sets forth parameters for creation thereof.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/23/2004)

1 AN ACT authorizing the transfer of development rights by
2 municipalities, amending P.L.1993, c.339, P.L.1983, c.32, and
3 amending and supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).
4

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

7
8 1. (New section) Sections 1 through 27 of this act shall be known
9 and may be cited as the "State Transfer of Development Rights Act."
10

11 2. (New section) The Legislature finds and declares that as the
12 most densely populated state in the nation, the State of New Jersey is
13 faced with the challenge of accommodating vital growth while
14 maintaining the environmental integrity, preserving the natural
15 resources, and strengthening the agricultural industry and cultural
16 heritage of the Garden State; that the responsibility for meeting this
17 challenge falls most heavily upon local government to appropriately
18 shape the land use patterns so that growth and preservation become
19 compatible goals; that until now municipalities in most areas of the
20 State have lacked effective and equitable means by which potential
21 development may be transferred from areas where preservation is most
22 appropriate to areas where growth can be better accommodated and
23 maximized; and that the tools necessary to meet the challenge of
24 balanced growth in an equitable manner in New Jersey must be made
25 available to local government as the architects of New Jersey's future.

26 The Legislature further finds and declares that the "Burlington
27 County Transfer of Development Rights Demonstration Act,"
28 P.L.1989, c.86 (C.40:55D-113 et al.), was enacted in 1989 as a pilot
29 transfer of development rights (TDR) program to demonstrate the
30 feasibility of TDR as a land use planning tool; and that the Burlington
31 County pilot program has been a success and should now be expanded
32 to the remainder of the State of New Jersey in a manner that is fair and
33 equitable to all landowners.

34 The Legislature therefore determines that it is in the public interest
35 to authorize all municipalities in the State to establish and implement
36 TDR programs.
37

38 3. (New section) a. The governing body of any municipality that
39 fulfills the criteria set forth in section 4 of P.L. , c . (C.)
40 (pending before the Legislature as this bill) may, by ordinance
41 approved by the county planning board, provide for the transfer of
42 development potential within its jurisdiction. The governing bodies of
43 two or more municipalities that fulfill the criteria set forth in section

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

Matter underlined thus is new matter.

1 4 of P.L. , c. (C.) (pending before the Legislature as this bill)
2 may, by substantially similar ordinances approved by their respective
3 county planning boards, provide for a joint program for the transfer of
4 development potential, including transfers from sending zones in one
5 municipality to receiving zones in the other, regardless of whether or
6 not those municipalities are situated within the same county. Any such
7 program shall be carried out by the municipal planning board or
8 boards.

9 A program may include the designation of one or more sending or
10 receiving zones.

11 b. The Office of Smart Growth shall provide such technical
12 assistance as may be requested by municipalities or a county planning
13 board, and as may be reasonably within the capacity of the office to
14 provide, in the preparation, implementation or review, as the case may
15 be, of the master plan elements required to have been adopted by the
16 municipality as a condition for adopting a development transfer
17 ordinance pursuant to section 4 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), capital improvement program or
19 development transfer ordinance.

20

21 4. (New section) Prior to the adoption or amendment of any
22 development transfer ordinance, a municipality shall:

23 a. Adopt a development transfer plan element of its master plan
24 pursuant to paragraph (14) of subsection b. of section 19 of P.L.1975,
25 c.291 (C.40:55D-28) in accordance with the requirements of section
26 5 of P.L. , c. (C.) (pending before the Legislature as this
27 bill);

28 b. Adopt a capital improvement program pursuant to section 20 of
29 P.L.1975, c.291 (C.40:55D-29) for the receiving zone, which includes
30 the location and cost of all infrastructure and a method of cost sharing
31 if any portion of the cost is to be assessed against developers pursuant
32 to section 30 of P.L.1975, c.291 (C.40:55D-42);

33 c. Adopt a utility service plan element of the master plan pursuant
34 to section 19 of P.L.1975, c.291 (C.40:55D-28) that specifically
35 addresses providing necessary utility services within any designated
36 receiving zone within a specified time period so that no development
37 seeking to utilize development potential transfer is unreasonably
38 delayed because utility services are not available;

39 d. Prepare a real estate market analysis pursuant to section 12 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 which examines the relationship between the development rights
42 anticipated to be generated in the sending zones and the capacity of
43 designated receiving zones to accommodate the necessary
44 development; and

45 e. Either receive approval of: (1) its initial petition for endorsement
46 of its master plan by the State Planning Commission pursuant to

1 P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted
2 pursuant thereto either individually, or as part of a county or regional
3 plan, provided that the petition included the development transfer
4 ordinance and supporting documentation, or (2) the development
5 transfer ordinance and supporting documentation as an amendment to
6 a previously approved petition for master plan endorsement by the
7 State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-
8 196 et seq.) and regulations adopted pursuant thereto.

9
10 5. (New section) In order to serve as the basis for a development
11 transfer ordinance pursuant to subsection a. of section 4 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill), a
13 development transfer plan element of a masterplan shall include:

14 a. an estimate of the anticipated population and economic growth
15 in the municipality for the succeeding 10 years;

16 b. the identification and description of all prospective sending and
17 receiving zones;

18 c. an analysis of how the anticipated population growth estimated
19 pursuant to subsection a. of this section is to be accommodated within
20 the municipality in general, and the receiving zone or zones in
21 particular;

22 d. an estimate of existing and proposed infrastructure of the
23 proposed receiving zone;

24 e. a presentation of the procedure and method for issuing the
25 instruments necessary to convey the development potential from the
26 sending zone to the receiving zone; and

27 f. explicit planning objectives and design standards to govern the
28 review of applications for development in the receiving zone in order
29 to facilitate their review by the approving authority.

30
31 6. (New section) a. Any municipality located in whole or in part
32 in the pinelands area, as defined in the "Pinelands Protection Act,"
33 P.L.1979, c.111 (C.13:18A-1 et seq.), shall submit the proposed
34 development transfer ordinance, development transfer and utility
35 service plan elements of the master plan, real estate market analysis,
36 and capital improvement program to the Pinelands Commission for
37 review for those areas included in that proposed ordinance that are
38 situated within the pinelands area. The Pinelands Commission shall
39 determine whether the proposed ordinance is compatible with the
40 provisions of the "Pinelands Development Credit Bank Act,"
41 P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent
42 with the comprehensive management plan adopted by the Pinelands
43 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the
44 commission determines that the proposed development transfer
45 ordinance is not compatible or consistent, the commission shall make
46 such recommendations as may be necessary to conform the proposed

1 ordinance with the comprehensive management plan. The municipality
2 shall not adopt the proposed ordinance unless the changes
3 recommended by the Pinelands Commission have been included in the
4 ordinance.

5 b. No development transfer ordinance that involves land in the
6 pinelands area shall take effect unless it has been certified by the
7 Pinelands Commission pursuant to the provisions of the "Pinelands
8 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the
9 comprehensive management plan.

10

11 7. (New section) A municipality which provides for the transfer of
12 development as set forth in section 3 of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall prepare or amend a
14 development transfer ordinance that designates sending and receiving
15 zones and is substantially consistent with or designed to effectuate the
16 development transfer plan element of the master plan adopted pursuant
17 to section 19 of P.L.1975, c.291 (C.40:55D-28) and the capital
18 improvement program adopted pursuant to section 20 of P.L.1975,
19 c.291 (C.40:55D-29). A governing body that chooses to adopt an
20 ordinance or amendment or revision thereto which in whole or in part
21 is inconsistent with the development transfer plan element of the
22 master plan or the capital improvement program may do so only by
23 affirmative vote of a majority of the full authorized membership of the
24 governing body, with the reasons of the governing body for so acting
25 set forth in a resolution and recorded in its minutes when adopting
26 such an ordinance.

27 In creating and establishing sending and receiving zones, the
28 governing body of the municipality shall designate tracts of land of
29 such size and number and with such boundaries, densities and
30 permitted uses as may be necessary to carry out the purposes of
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32 The adoption or amendment of a development transfer ordinance
33 shall be considered a change to the classifications or boundaries of a
34 zoning district and therefore subject to the notification requirements
35 of section 2 of P.L.1995, c.249 (C.40:55D-62.1).

36

37 8. (New section) a. A sending zone shall be composed
38 predominantly of land having one or more of the following
39 characteristics:

40 (1) agricultural land, woodland, floodplain, wetlands, threatened
41 or endangered species habitat, aquifer recharge area, recreation or
42 park land, waterfront, steeply sloped land or other lands on which
43 development activities are restricted or precluded by duly enacted
44 local laws or ordinances or by laws or regulations adopted by federal
45 or State agencies;

46 (2) land substantially improved or developed in a manner so as to

1 present a unique and distinctive aesthetic, architectural, or historical
2 point of interest in the municipality;

3 (3) other improved or unimproved areas that should remain at low
4 densities for reasons of inadequate transportation, sewerage or other
5 infrastructure, or for such other reasons as may be necessary to
6 implement the State Development and Redevelopment Plan adopted
7 pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and local or
8 regional plans.

9 b. Notwithstanding subsection a. of this section, lands permanently
10 restricted through development easements or conservation easements
11 existing prior to the adoption of a development transfer ordinance may
12 be included in a sending zone upon a finding by the municipal
13 governing body that this inclusion is in the public interest.

14 c. The development transfer ordinance may assign bonus
15 development potential to specified properties in the sending zone
16 based on specified criteria in order to encourage the permanent
17 protection of those lands pursuant to the development transfer
18 ordinance.

19

20 9. (New section) a. A receiving zone shall be appropriate and
21 suitable for development and shall be at least sufficient to
22 accommodate all of the development potential of the sending zone,
23 and at all times there shall be a reasonable likelihood that a balance is
24 maintained between sending zone land values and the value of the
25 transferable development potential.

26 b. The development potential of the receiving zone shall be
27 realistically achievable, considering: (1) the availability of all necessary
28 infrastructure; (2) all of the provisions of the zoning ordinance
29 including those related to density, lot size and bulk requirements; and
30 (3) given local land market conditions as of the date of the adoption
31 of the development transfer ordinance.

32 c. The development potential of the receiving zone shall be
33 consistent with the criteria established pursuant to subsection b. of
34 section 13 of P.L. , c. (C.) (pending before the Legislature
35 as this bill).

36 d. All infrastructure necessary to support the development of the
37 receiving zone as set forth in the zoning ordinance shall either exist or
38 be scheduled to be provided so that no development requiring the
39 purchase of transferable development potential shall be unreasonably
40 delayed because the necessary infrastructure will not be available due
41 to any action or inaction by the municipality.

42 e. No density increases may be achieved in a receiving zone
43 without the use of appropriate instruments of transfer.

44

45 10. (New section) Except as otherwise provided in this section, a
46 development transfer ordinance shall provide that, on granting a

1 variance under subsection d. of section 57 of P.L.1975, c.291
2 (C.40:55D-70) that increases the development potential of a parcel of
3 property not in the designated receiving zone for which the variance
4 has been granted by more than 5%, that parcel of property shall
5 constitute a receiving zone and the provisions of the ordinance for
6 receiving zones shall apply with respect to the amount of development
7 potential required to implement that variance.

8 This section shall not apply to any development that fulfills the
9 definition of a minor site plan or minor subdivision.

10
11 11. (New section) a. A development transfer ordinance shall
12 provide for the issuance of such instruments as may be necessary and
13 the adoption of procedures for recording the permitted use of the land
14 at the time of the recording, the separation of the development
15 potential from the land, and the recording of the allowable residual use
16 of the land upon separation of the development potential.

17 b. A development transfer ordinance shall specifically provide that
18 upon the transfer of development potential from a sending zone, the
19 owner of the property from which the development potential has been
20 transferred shall cause a statement containing the conditions of the
21 transfer and the terms of the restrictions of the use and development
22 of the land to be attached to and recorded with the deed of the land in
23 the same manner as the deed was originally recorded. These
24 restrictions and conditions shall state that any development
25 inconsistent therewith is expressly prohibited, shall run with the land,
26 and shall be binding upon the landowner and every successor in
27 interest thereto.

28 c. The restrictions shall be expressly enforceable by the
29 municipality and the county in which the property is located, any
30 interested party, and the State of New Jersey.

31 d. All development potential transfers shall be recorded in the
32 manner of a deed in the book of deeds in the office of the county clerk
33 or county register of deeds and mortgages, as appropriate. This
34 recording shall specify the lot and block number of the parcel in the
35 sending zone from which the development potential was transferred
36 and the lot and block number of the parcel in the receiving zone to
37 which the development potential was transferred.

38 e. All development potential transfers also shall be recorded with
39 the State Transfer of Development Rights Bank in the Development
40 Potential Transfer Registry as required pursuant to section 5 of
41 P.L.1993, c.339 (C.4:1C-53).

42
43 12. (New section) a. Prior to the final adoption of a development
44 transfer ordinance or any significant amendment to an existing
45 development transfer ordinance, the planning board shall conduct a
46 real estate market analysis of the current and future land market which

1 examines the relationship between the development rights anticipated
2 to be generated in the sending zone and the likelihood of their
3 utilization in the designated receiving zone. The analysis shall include
4 thorough consideration of the extent of development projected for the
5 receiving zone and the likelihood of its achievement given current and
6 projected market conditions in order to assure that the designated
7 receiving zone has the capacity to accommodate the development
8 rights anticipated to be generated in the sending zone. The real estate
9 market analysis shall conform to rules and regulations adopted
10 pursuant to subsection c. of this section.

11 b. Upon completion of the real estate market analysis and at a
12 meeting of the planning board held prior to the meeting at which the
13 development transfer ordinance receives first reading, the planning
14 board shall hold a hearing on the real estate market analysis.

15 The hearing shall be held in accordance with the provisions of
16 subsections a. through f. of section 6 of P.L.1975, c.291 (C.40:55D-
17 10).

18 c. The Commissioner of Community Affairs, in consultation with
19 the board of directors of the State Transfer of Development Rights
20 Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-
21 51), shall within 180 days of the enactment of P.L. , c. (C.)
22 (pending before the Legislature as this bill), adopt rules and
23 regulations which set forth the required contents of the real estate
24 market analysis.

25

26 13. (New section) a. Prior to adoption of a development transfer
27 ordinance or of any amendment of an existing development transfer
28 ordinance, the municipality shall submit a copy of the proposed
29 ordinance, copies of the development transfer and utility service plan
30 elements of the master plan adopted pursuant to section 19 of
31 P.L.1975, c.291 (C.40:55D-28) and capital improvement program
32 adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29),
33 proposed municipal master plan changes necessary for the enactment
34 of the development transfer ordinance, and the real estate market
35 analysis to the county planning board. If the ordinance and master
36 plan changes involve agricultural land, then the county agriculture
37 development board shall also be provided information identical to that
38 provided to the county planning board.

39 b. The county planning board, upon receiving the proposed
40 development transfer ordinance and accompanying documentation,
41 shall conduct a review of the proposed ordinance with regard to the
42 following criteria:

43 (1) consistency with the adopted master plan of the county;

44 (2) support of regional objectives for agricultural land
45 preservation, natural resource management and protection, historic or
46 architectural conservation, or the preservation of other public values

1 as enumerated in subsection a. of section 8 of P.L. , c. (C.)
2 (pending before the Legislature as this bill);

3 (3) consistency with reasonable population and economic forecasts
4 for the county; and

5 (4) sufficiency of the receiving zone to accommodate the
6 development potential that may be transferred from sending zones and
7 a reasonable assurance of marketability of any instruments of transfer
8 that may be created.

9

10 14. (New section) a. Within 60 days after receiving a proposed
11 development transfer ordinance and accompanying documentation
12 transmitted pursuant to section 13 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), the county planning board
14 shall submit to the municipality formal comments detailing its review
15 and shall either recommend or not recommend enactment of the
16 proposed development transfer ordinance. If enactment of the
17 proposed ordinance is recommended, the municipality may proceed
18 with adoption of the ordinance. Failure to submit recommendations
19 within the 60-day period shall constitute recommendation of the
20 ordinance.

21 b. The CADB shall review a proposed development transfer
22 ordinance and accompanying documentation within 30 days of receipt
23 thereof, and shall submit such written recommendations as it deems
24 appropriate, to the county planning board.

25 c. If the county planning board does not recommend enactment, the
26 reasons therefor shall be clearly stated in the formal comments. If the
27 objections of the county planning board cannot be resolved to the
28 satisfaction of both the municipality and the county planning board
29 within an additional 30 days, the municipality shall petition the Office
30 of Smart Growth to render a final determination pursuant to section
31 15 of P.L. , c. (C.) (pending before the Legislature as this
32 bill).

33

34 15. When the Office of Smart Growth receives a petition pursuant
35 to subsection c. of section 14 of P.L. , c. (C.) (pending
36 before the Legislature as this bill), it shall review the petition, the
37 record of comment of the county planning board, any supporting
38 documentation submitted by the municipality, and any comments
39 received from property owners in the sending or receiving zones and
40 other members of the public. Within 60 days after receipt of the
41 petition, the Office of Smart Growth shall approve, approve with
42 conditions, or disapprove the proposed development transfer
43 ordinance, stating in writing the reasons therefor. The basis for review
44 by the Office of Smart Growth shall be:

45 a. compliance of the proposed development transfer ordinance with
46 the provisions of P.L. , c. (C.) (pending before the

1 Legislature as this bill);

2 b. accuracy of the information developed in the proposed
3 development transfer ordinance, the development transfer and utility
4 service plan elements of the master plan adopted pursuant to section
5 19 of P.L.1975, c.291 (C.40:55D-28), the real estate market analysis
6 and capital improvement program adopted pursuant to section 20 of
7 P.L.1975, c.291 (C.40:55D-29);

8 c. an assessment of the potential for successful implementation of
9 the proposed development transfer ordinance; and

10 d. consistency with any plan that applies to the municipality that
11 has been endorsed by the State Planning Commission pursuant to
12 P.L.1985, c.398 (C.52:18A-196 et al.) and its implementing
13 regulations.

14

15 16. If the Office of Smart Growth determines, in response to a
16 municipal petition submitted pursuant to subsection c. of section 14 of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 that the proposed development transfer ordinance may be approved,
19 the municipality may proceed with adoption of the proposed
20 ordinance. If the Office of Smart Growth determines that the
21 proposed ordinance may be approved with conditions, the Office of
22 Smart Growth shall make such recommendations as may be necessary
23 for the proposed ordinance to be approved. The municipality shall not
24 adopt the proposed ordinance unless the changes recommended by the
25 Office of Smart Growth have been included in the proposed
26 ordinance. If the Office of Smart Growth determines that the
27 development transfer ordinance should be disapproved, the
28 municipality may not proceed with adoption of the proposed
29 ordinance.

30 The decision by the Office of Smart Growth on the petition shall
31 have the effect of a final agency action and any appeal of that decision
32 shall be made directly to the Appellate Division of the Superior Court.

33

34 17. (New section) a. The county clerk or county register of deeds
35 and mortgages, as the case may be, shall transmit to the assessor of the
36 municipality in which a development potential transfer has occurred a
37 record of the transfer and all pertinent information required to value,
38 assess, and tax the properties subject to the transfer in a manner
39 consistent with subsection b. of this section.

40 b. Property from which and to which development potential has
41 been transferred shall be assessed at its fair market value reflecting the
42 development transfer. Development potential that has been removed
43 from a sending zone but has not yet been employed in a receiving zone
44 shall not be assessed for real property taxation. Nothing in P.L. ,

45 c. (C.) (pending before the Legislature as this bill) shall be
46 construed to affect, or in any other way alter, the valuation

1 assessment, or taxation of land that is valued, assessed, and taxed
2 pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48
3 (C.54:4-23.1 et seq.).

4 c. Property in a sending or receiving zone that has been subject to
5 a development potential transfer shall be newly valued, assessed, and
6 taxed as of October 1 next following the development potential
7 transfer.

8 d. Development potential that has been conveyed from a property
9 pursuant to P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall not be subject to any fee imposed
11 pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

12

13 18. (New section) The absence of either of the following shall
14 constitute a rebuttable presumption that a development transfer
15 ordinance is no longer reasonable:

16 a. plan endorsement pursuant to P.L.1985, c.398 (C.52:18A-196
17 et seq.) or regulations adopted pursuant thereto is no longer in effect
18 for that municipality; or

19 b. a sufficient percentage of the development potential has not been
20 transferred in that municipality as provided in section 20 of P.L. ,

21 c. (C.) (pending before the Legislature as this bill).

22 If the ordinance of a municipality that is a participant of a joint
23 program pursuant to section 3 of P.L. , c. (C.) (pending
24 before the Legislature as this bill) is presumed to be no longer
25 reasonable pursuant to this section, then the ordinances of all
26 participating municipalities also shall be presumed to be no longer
27 reasonable.

28

29 19. (New section) A development transfer ordinance and real
30 estate market analysis shall be reviewed by the planning board and
31 governing body of the municipality at the end of three years
32 subsequent to its adoption. This review shall include an analysis of
33 development potential transactions in both the private and public
34 market, an update of current conditions in comparison to the
35 development transfer plan element of the master plan adopted pursuant
36 to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital
37 improvement program adopted pursuant to section 20 of P.L.1975,
38 c.291 (C.40:55D-29), and an assessment of the performance goals of
39 the development transfer program, including an evaluation of the units
40 constructed with and without the utilization of the development
41 transfer ordinance. A report of findings from this review shall be
42 submitted to the county planning board, the Office of Smart Growth
43 and, when the sending zone includes agricultural land, the CADB for
44 review and recommendations. Based on this review the municipality
45 shall act to maintain and enhance the value of development transfer
46 potential not yet utilized and, if necessary, amend the capital

1 improvement program adopted pursuant to section 20 of P.L.1975,
2 c.291 (C.40:55D-29), the development transfer plan element of the
3 master plan adopted pursuant to section 19 of P.L.1975, c.291
4 (C.40:55D-28) and the development transfer ordinance adopted
5 pursuant to P.L. , c. (C.) (pending before the Legislature as this
6 bill).

7
8 20. (New section) A development transfer ordinance and the real
9 estate market analysis also shall be reviewed by the planning board and
10 governing body of the municipality at the end of five years subsequent
11 to its adoption. This review shall provide for the examination of the
12 development transfer ordinance and the real estate market analysis to
13 determine whether the program for development transfer and the
14 permitted uses in the sending zone continue to remain economically
15 viable, and, if not, an update of the development transfer plan element
16 of the master plan adopted pursuant to section 19 of P.L.1975, c.291
17 (C.40:55D-28) and capital improvement program adopted pursuant to
18 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If at
19 least 25% of the development potential has not been transferred at the
20 end of this five-year period, the development transfer ordinance shall
21 be presumed to be no longer reasonable, including any zoning changes
22 adopted as part of the development transfer program, within 90 days
23 after the end of the five-year period unless one of the following is met:

24 a. the municipality immediately takes action to acquire or provide
25 for the private purchase of the difference between the development
26 potential already transferred and 25% of the total development transfer
27 potential created in the sending zone under the development transfer
28 ordinance;

29 b. a majority of the property owners in a sending zone who own
30 land from which the development potential has not yet been
31 transferred agree that the development transfer ordinance should
32 remain in effect;

33 c. the municipality can demonstrate either future success or can
34 demonstrate that low levels of development potential transfer activity
35 are due, not to ordinance failure, but to low levels of development
36 demand in general. This demonstration shall require the concurrence
37 of the county planning board and the Office of Smart Growth, and
38 shall be the subject of a municipal public hearing conducted prior to a
39 final determination regarding the future viability of the development
40 transfer program; or

41 d. the municipality can demonstrate that less than 25% of the
42 remaining development potential in the sending zone has been available
43 for sale at market value during the five-year period.

44
45 21. (New section) Following review of a development transfer
46 ordinance as provided in section 20 of P.L. , c. (C.) (pending

1 before the Legislature as this bill), the planning board and the
2 governing body of the municipality shall review the development
3 transfer ordinance and real estate market analysis at least once every
4 five years with every second review occurring in conjunction with the
5 review and update of the master plan of the municipality pursuant to
6 the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This
7 review shall provide for the examination of the ordinance and the real
8 estate market analysis to determine whether the program and uses
9 permitted in the sending zone continue to be economically viable and,
10 if not, an update of the development transfer plan element of the
11 master plan adopted pursuant to section 19 of P.L.1975, c.291
12 (C.40:55D-28) and capital improvement program adopted pursuant to
13 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.

14 If 25% of the remaining development transfer potential at the start
15 of each five-year review period in the sending zone under the
16 development transfer ordinance has not been transferred during the
17 five-year period, the municipal governing body shall repeal the
18 development transfer ordinance, including any zoning changes adopted
19 as part of the development transfer program, within 90 days after the
20 end of that five-year period unless the municipality meets one of the
21 standards established pursuant to section 20 of P.L. , c. (C.)
22 (pending before the Legislature as this bill).

23

24 22. (New section) a. The governing body of any municipality that
25 has adopted a development transfer ordinance, or the governing body
26 of any county in which at least one municipality has adopted a
27 development transfer ordinance, may provide for the purchase, sale,
28 or exchange of the development potential that is available for transfer
29 from a sending zone by the establishment of a development transfer
30 bank. Alternatively, the governing body of any municipality which has
31 adopted a development transfer ordinance and has not established a
32 municipal development transfer bank may either utilize the State TDR
33 Bank or a county development transfer bank for these purposes,
34 provided that the county in which the municipality is situated has
35 established such a bank.

36 b. Any development transfer bank established by a municipality or
37 county shall be governed by a board of directors comprising five
38 members appointed by the governing body of the municipality or
39 county, as the case may be. The members shall have expertise in either
40 banking, law, land use planning, natural resource protection, historic
41 site preservation or agriculture. For the purposes of P.L. , c.
42 (C.) (pending before the Legislature as this bill) and the "Local
43 Bond Law," N.J.S.40A:2-1 et seq., a purchase by the bank shall be
44 considered an acquisition of lands for public purposes.

45

46 23. (New section) a. A development transfer bank may purchase

1 property in a sending zone if adequate funds have been provided for
2 these purposes and the person from whom the development potential
3 is to be purchased demonstrates possession of marketable title to the
4 property, is legally empowered to restrict the use of the property in
5 conformance with P.L. , c. (C.) (pending before the
6 Legislature as this bill), and certifies that the property is not otherwise
7 encumbered or transferred.

8 b. The development transfer bank may, for the purposes of its own
9 development potential transactions, establish a municipal average of
10 the value of the development potential of all property in a sending
11 zone of a municipality within its jurisdiction, which value shall
12 generally reflect market value prior to the effective date of the
13 development transfer ordinance. The establishment of this municipal
14 average shall not prohibit the purchase of development potential for
15 any price by private sale or transfer, but shall be used only when the
16 development transfer bank itself is purchasing the development
17 potential of property in the sending zone. Several average values in
18 any sending zone may be established for greater accuracy of valuation.

19 c. The development transfer bank may sell, exchange, or otherwise
20 convey the development potential of property that it has purchased or
21 otherwise acquired pursuant to the provisions of P.L. , c. (C.)
22 (pending before the Legislature as this bill), but only in a manner that
23 does not substantially impair the private sale or transfer of
24 development potential.

25 d. When a sending zone includes agricultural land, a development
26 transfer bank shall, when considering the purchase of development
27 potential based upon values derived by municipal averaging, submit the
28 municipal average arrived at pursuant to subsection b. of this section
29 for review and comment to the CADB. The development transfer
30 bank shall coordinate the development transfer program with the
31 farmland preservation programs established pursuant to the
32 "Agriculture Retention and Development Act," P.L.1983, c.32
33 (C.4:1C-11 et al.) and the "Garden State Preservation Trust Act,"
34 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) to the
35 maximum extent practicable and feasible.

36 e. A development transfer bank may apply for funds for the
37 purchase of development potential under the provisions of sections 1
38 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), or any other act
39 providing funds for the purpose of acquiring and developing land for
40 recreation and conservation purposes consistent with the provisions
41 and conditions of those acts.

42 f. A development transfer bank may apply for matching funds for
43 the purchase of development potential under the provisions of the
44 "Garden State Preservation Trust Act," sections 1 through 42 of
45 P.L.1999, c.152 (C.13:8C-1 et seq.) for the purpose of farmland
46 preservation and agricultural development consistent with the

1 provisions and conditions of that act and the "Agriculture Retention
2 and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.). In addition,
3 a development transfer bank may apply to the State Transfer of
4 Development Rights Bank established pursuant to section 3 of
5 P.L.1993, c.339 (C.4:1C-51) for either planning or development
6 potential purchasing funds, or both, as provided pursuant to section 4
7 of P.L.1993, c.339 (C.4:1C-52).

8
9 24. (New section) If the governing body of a county provides for
10 the acquisition of a development easement under the provisions of the
11 "Agriculture Retention and Development Act," P.L.1983, c.32
12 (C.4:1C-11 et al.) or the "Garden State Preservation Trust Act,"
13 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), it may
14 sell the development potential associated with the development
15 easement subject to the terms and conditions of the development
16 transfer ordinance adopted pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill); provided that if the
18 development easement was purchased using moneys provided pursuant
19 to the "Garden State Preservation Trust Act," sections 1 through 42
20 of P.L.1999, c.152 (C.13:8C-1 et seq.), a percentage of all revenues
21 generated through the resale of the development potential shall be
22 refunded to the State in an amount equal to the State's percentage
23 contribution to the original development easement purchase.
24 Notwithstanding the foregoing, such refund shall not be paid to the
25 State in the event the State Treasurer determines that such refund
26 would adversely affect the tax-exempt status of any bonds authorized
27 pursuant to the "Garden State Preservation Trust Act," sections 1
28 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.). This repayment
29 shall be made within 90 days after the end of the calendar year in
30 which the sale occurs.

31
32 25. (New section) Agricultural land involved in an approved
33 development transfer ordinance shall be provided the right to farm
34 benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et
35 al.) and other benefits that may be provided pursuant to the
36 "Agriculture Retention and Development Act," P.L.1983, c.32
37 (C.4:1C-11 et seq.).

38
39 26. (New section) a. The governing body of a municipality that
40 adopts a development transfer ordinance shall annually prepare and
41 submit a report on activity undertaken pursuant to the development
42 transfer ordinance to the county planning board.

43 b. The county planning board shall submit copies of these reports
44 along with an analysis of the effectiveness of the ordinances in
45 achieving the purposes of P.L. , c. (C.) (pending before the
46 Legislature as this bill) to the State Planning Commission on July 1 of

1 the third year next following enactment of P.L. , c. (C.)
2 (pending before the Legislature as this bill) and annually thereafter.

3
4 27. (New section) a. Except as provided otherwise pursuant to
5 subsections b. and c. of this section, the provisions of P.L. , c.
6 (C.) (pending before the Legislature as this bill) shall not apply or
7 be construed to nullify any development transfer ordinance adopted by
8 a municipality in Burlington County pursuant to P.L.1989, c.86
9 (C.40:55D-113 et al.) prior to the effective date of P.L. , c.
10 (C.) (pending before the Legislature as this bill).

11 b. On or after the effective date of P.L. , c. (C.) (pending
12 before the Legislature as this bill), any municipality in Burlington
13 County may adopt a development transfer ordinance either pursuant
14 to P.L.1989, c.86 (C.40:55D-113 et al.) or P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 c. Any municipality in Burlington County may utilize a
17 development transfer bank established by the municipality or county
18 pursuant to P.L. , c. (C.) (pending before the Legislature as
19 this bill), by the municipality or Burlington County pursuant to
20 P.L.1989, c.86 (C.40:55D-113 et al.), or by the State pursuant to
21 P.L.1993, c.339 (C.4:1C-49 et seq.) or P.L. , c. (C.) (pending
22 before the Legislature as this bill).

23
24 28. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read
25 as follows:

26 24. a. Any landowner applying to the board to sell a development
27 easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall
28 offer to sell the development easement at a price which, in the opinion
29 of the landowner, represents a fair value of the development potential
30 of the land for nonagricultural purposes, as determined in accordance
31 with the provisions of [this act] P.L.1983, c.32.

32 b. Any offer shall be reviewed and evaluated by the board and the
33 committee in order to determine the suitability of the land for
34 development easement purchase. Decisions regarding suitability shall
35 be based on the following criteria:

36 (1) Priority consideration shall be given, in any one county, to
37 offers with higher numerical values obtained by applying the following
38 formula:

39
40 nonagricultural - agricultural - landowner's
41 developmental value value asking price
42 -----
43 nonagricultural - agricultural
44 development value value
45

46 (2) The degree to which the purchase would encourage the

1 survivability of the municipally approved program in productive
2 agriculture; and

3 (3) The degree of imminence of change of the land from productive
4 agriculture to nonagricultural use.

5 The board and the committee shall reject any offer for the sale of
6 development easements which is unsuitable according to the above
7 criteria and which has not been approved by the board and the
8 municipality.

9 c. Two independent appraisals paid for by the board shall be
10 conducted for each parcel of land so offered and deemed suitable. The
11 appraisals shall be conducted by independent, professional appraisers
12 selected by the board and the committee from among members of
13 recognized organizations of real estate appraisers. The appraisals shall
14 determine the current overall value of the parcel for nonagricultural
15 purposes, as well as the current market value of the parcel for
16 agricultural purposes. The difference between the two values shall
17 represent an appraisal of the value of the development easement. If
18 Burlington County or a municipality therein has established a
19 development transfer bank pursuant to the provisions of P.L.1989,
20 c.86 (C.40:55D-113 et seq.) or if any county or any municipality in
21 any county has established a development transfer bank pursuant to
22 section 22 of P.L. , c. (C.) (pending before the Legislature
23 as this bill), the municipal average of the value of the development
24 potential of property in a sending zone established by the bank may be
25 the value used by the board in determining the value of the
26 development easement. If a development easement is purchased using
27 moneys appropriated from the fund, the State shall provide no more
28 than 80%, except 100% under emergency conditions specified by the
29 committee pursuant to rules or regulations, of the cost of the
30 appraisals conducted pursuant to this section.

31 d. Upon receiving the results of the appraisals, or in Burlington
32 county or a municipality therein or elsewhere where a municipal
33 average has been established under [P.L.1989, c.86 (C.40:55D-113 et
34 seq.)] subsection c. of this section, upon receiving an application from
35 the landowners, the board and the committee shall compare the
36 appraised value, or the municipal average, as the case may be, and the
37 landowner's offer and, pursuant to the suitability criteria established in
38 subsection b. of this section:

39 (1) Approve the application to sell the development easement and
40 rank the application in accordance with the criteria established in
41 subsection b. of this section; or

42 (2) Disapprove the application, stating the reasons therefor.

43 e. Upon approval by the committee and the board, the secretary is
44 authorized to provide the board, within the limits of funds
45 appropriated therefor, an amount equal to no more than 80%, except
46 100% under emergency conditions specified by the committee

1 pursuant to rules or regulations, of the purchase price of the
2 development easement, as determined pursuant to the provisions of
3 this section. The board shall provide its required share and accept the
4 landowner's offer to sell the development easement. The acceptance
5 shall cite the specific terms, contingencies and conditions of the
6 purchase.

7 f. The landowner shall accept or reject the offer within 30 days of
8 receipt thereof. Any offer not accepted within that time shall be
9 deemed rejected.

10 g. Any landowner whose application to sell a development
11 easement has been rejected for any reason other than insufficient funds
12 may not reapply to sell a development easement on the same land
13 within two years of the original application.

14 h. No development easement shall be purchased at a price greater
15 than the appraised value determined pursuant to subsection c. of this
16 section or the municipal average, as the case may be.

17 i. The appraisals conducted pursuant to this section or the fair
18 market value of land restricted to agricultural use shall not be used to
19 increase the assessment and taxation of agricultural land pursuant to
20 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1
21 et seq.).

22 j. (1) In determining the suitability of land for development
23 easement purchase, the board and the committee may also include as
24 additional factors for consideration the presence of a historic building
25 or structure on the land and the willingness of the landowner to
26 preserve that building or structure, but only if the committee first
27 adopts, pursuant to the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.), rules and regulations implementing this
29 subsection. The committee may, by rule or regulation adopted
30 pursuant to the "Administrative Procedure Act," assign any such
31 weight it deems appropriate to be given to these factors.

32 (2) The provisions of paragraph (1) of this subsection may also be
33 applied in determining the suitability of land for fee simple purchase
34 for farmland preservation purposes as authorized by P.L.1983, c.31
35 (C.4:1C-1 et seq.), P.L.1983, c.32 (C.4:1C-11 et seq.), and P.L.1999,
36 c.152 (C.13:8C-1 et seq.).

37 (3) (a) For the purposes of paragraph (1) of this subsection:
38 "historic building or structure" means the same as that term is defined
39 pursuant to subsection c. of section 2 of P.L.2001, c.405
40 (C.13:8C-40.2).

41 (b) For the purposes of paragraph (2) of this subsection, "historic
42 building or structure" means the same as that term is defined pursuant
43 to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

44 (cf: P.L.2001, c.405, s.3)

45

46 29. Section 2 of P.L.1993, c.339 (C.4:1C-50) is amended to read

1 as follows:

2 2. As used in this act:

3 "Board" means the board of directors of the State Transfer of
4 Development Rights Bank established pursuant to section 3 of [this
5 act] P.L.1993, c.339 (C.4:1C-51);

6 "Development potential" means the maximum number of dwelling
7 units or square feet of nonresidential floor area that may be
8 constructed on a specified lot or in a specified zone under the master
9 plan and land use regulations in effect on the date of the adoption of
10 the development transfer ordinance, and in accordance with
11 recognized environmental constraints;

12 "Development transfer" means the conveyance of development
13 potential, or the permission for development, from one or more lots to
14 one or more other lots by deed, easement, or other means as
15 authorized by ordinance adopted pursuant to law;

16 "Instrument" means the easement, credit, or other deed restriction
17 used to record a development transfer; and

18 "State Transfer of Development Rights Bank," "bank" or "State
19 TDR Bank" means the bank established pursuant to section 3 of [this
20 act, and shall constitute the development potential transfer bank for
21 the purposes of P.L.1989, c.183] P.L.1993, c.339 (C.4:1C-51).

22 (cf: P.L.1993, c.339, s.2)

23

24 30. Section 4 of P.L.1993, c.339 (C.4:1C-52) is amended to read
25 as follows:

26 4. The board shall have the following powers:

27 a. To purchase, or to provide matching funds for the purchase of
28 80% of, the value of development potential and to otherwise facilitate
29 development transfers, from the owner of record of the property from
30 which the development potential is to be transferred or from any
31 person, or entity, public or private, holding the interest in development
32 potential that is subject to development transfer; provided that, in the
33 case of providing matching funds for the purchase of 80% of the value
34 of development potential, the remaining 20% of that value is
35 contributed by the affected municipality or county, or both, after
36 public notice thereof in the New Jersey Register and in one newspaper
37 of general circulation in the area affected by the purchase. The
38 remaining 20% of the value of the development potential to be
39 contributed by the affected municipality or county, or both, to match
40 funds provided by the board, may be obtained by purchase from, or
41 donation by, the owner of record of the property from which the
42 development potential is to be transferred or from any person, or
43 entity, public or private, holding the interest in development potential
44 that is subject to development transfer. The value of development
45 potential may be determined by either appraisal, municipal averaging
46 based upon appraisal data, or by a formula supported by appraisal

- 1 data. The board may also engage in development transfer by sale,
2 exchange, or other method of conveyance, provided that in doing so,
3 the board shall not substantially impair the private sale, exchange or
4 other method of conveyance of development potential. The board may
5 not, nor shall anything in this act be construed as permitting the board
6 to, engage in development transfer from one municipality to another,
7 which transfer is not in accordance with the ordinances of both
8 municipalities;
- 9 b. To adopt and, from time to time, amend or repeal suitable
10 bylaws for the management of its affairs;
- 11 c. To adopt and use an official seal and alter that seal at its
12 pleasure;
- 13 d. To apply for, receive, and accept, from any federal, State, or
14 other public or private source, grants or loans for, or in aid of, the
15 board's authorized purposes;
- 16 e. To enter into any agreement or contract, execute any legal
17 document, and perform any act or thing necessary, convenient, or
18 desirable for the purposes of the board or to carry out any power
19 expressly given in this act;
- 20 f. To adopt, pursuant to the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary
22 to implement the provisions of this act;
- 23 g. To call to its assistance and avail itself of the services of the
24 employees of any State, county, or municipal department, board,
25 commission, or agency as may be required and made available for
26 these purposes;
- 27 h. To retain such staff as may be necessary in the career service
28 and to appoint an executive director thereof. The executive director
29 shall serve as a member of the senior executive or unclassified service
30 and may be appointed without regard to the provisions of Title 11A of
31 the New Jersey Statutes;
- 32 i. To review and analyze innovative techniques that may be
33 employed to maximize the total acreage reserved through the use of
34 perpetual easements;
- 35 j. To provide, through the State TDR Bank, a financial guarantee
36 with respect to any loan to be extended to any person that is secured
37 using development potential as collateral for the loan. Financial
38 guarantees provided under this act shall be in accordance with
39 procedures, terms and conditions, and requirements, including rights
40 and obligations of the parties in the event of default on any loan
41 secured in whole or in part using development potential as collateral,
42 to be established by rule or regulation adopted by the board pursuant
43 to the "Administrative Procedure Act";
- 44 k. To enter into agreement with the State Agriculture Development
45 Committee for the purpose of acquiring development potential through
46 the acquisition of development easements on farmland so that the

1 board may utilize the existing processes, procedures, and capabilities
2 of the State Agriculture Development Committee as necessary and
3 appropriate to accomplish the goals and objectives of the board as
4 provided for pursuant to this act;

5 1. To enter into agreements with other State agencies or entities
6 providing services and programs authorized by law so that the board
7 may utilize the existing processes, procedures, and capabilities of those
8 other agencies or entities as necessary and appropriate to accomplish
9 the goals and objectives of the board as provided for pursuant to this
10 act; [and]

11 m. To provide planning assistance grants to municipalities [that
12 have adopted viable development transfer ordinances, as determined
13 by the board,] for up to 50% of the cost of [planning associated with
14 such an ordinance] preparing, for development potential transfer
15 purposes, a utility service plan element or a development transfer plan
16 element of a master plan pursuant to section 19 of P.L.1975, c.291
17 (C.40:55D-28), a real estate market analysis required pursuant to
18 section 12 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), and a capital improvement program pursuant
20 to section 20 of P.L.1975, c.291 (C.40:55D-29) and incurred by a
21 municipality, or [\$10,000] \$40,000, whichever is less, which grants
22 shall be made utilizing moneys deposited into the bank pursuant to
23 section 8 of [this act] P.L.1993, c.339;

24 n. To provide funding in the form of grants or loans for the
25 purchase of development potential to development transfer banks
26 established by a municipality or county pursuant to P.L.1989, c.86
27 (C.40:55D-113 et seq.) or section 22 of P.L. , c. (C.)
28 (pending before the Legislature as this bill); and

29 o. To serve as a development transfer bank designated by the
30 governing body of a municipality or county pursuant to section 22 of
31 P.L. , c. (C.) (pending before the Legislature as this
32 bill).

33 (cf: P.L.1993, c.339, s.4)

34

35 31. Section 8 of P.L.1993, c.339 is amended to read as follows:

36 8. a. There is appropriated to the State Transfer of Development
37 Rights Bank from the "1989 Development Potential Transfer Bank
38 Fund" established pursuant to section 23 of P.L.1989, c.183, the sum
39 of \$20,000,000 for deposit into the State TDR Bank, which shall be
40 expended in accordance with the provisions of [this act] P.L.1993,
41 c.339 (C.4:1C-49 et al.)

42 b. Of the moneys appropriated pursuant to subsection a. of this
43 section, not more than \$400,000 may be expended in total for
44 administrative costs, staff assistance or professional services within the
45 period of four years from the effective date of [this act] P.L.1993,

1 c.339 (C.4:1C-49 et al.), and not more than ~~[\$400,000]~~ \$1,500,000
2 may be expended for the purposes of subsection m. of section 4 of
3 ~~[this act]~~ P.L.1993, c.339 (C.4:1C-52).
4 (cf: P.L.1993, c.339, s.8)

5
6 32. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to read
7 as follows:

8 3. For the purposes of this act, unless the context clearly indicates
9 a different meaning:

10 The term "shall" indicates a mandatory requirement, and the term
11 "may" indicates a permissive action.

12 "Administrative officer" means the clerk of the municipality, unless
13 a different municipal official or officials are designated by ordinance
14 or statute.

15 "Agricultural land" means "farmland" as defined pursuant to section
16 3 of P.L.1999, c.152 (C.13:8C-3).

17 "Applicant" means a developer submitting an application for
18 development.

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

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

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

31 "Building" means a combination of materials to form a construction
32 adapted to permanent, temporary, or continuous occupancy and having
33 a roof.

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

36 "Capital improvement" means a governmental acquisition of real
37 property or major construction project.

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

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

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

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

9 "Conventional" means development other than planned
10 development.

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

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

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

22 (cf: P.L.1991, c.412, s.1)

23

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

26 3.1. "Days" means calendar days.

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

29 "Developer" means the legal or beneficial owner or owners of a lot
30 or of any land proposed to be included in a proposed development,
31 including the holder of an option or contract to purchase, or other
32 person having an enforceable proprietary interest in such land.

33 "Development" means the division of a parcel of land into two or
34 more parcels, the construction, reconstruction, conversion, structural
35 alteration, relocation or enlargement of any building or other structure,
36 or of any mining excavation or landfill, and any use or change in the
37 use of any building or other structure, or land or extension of use of
38 land, for which permission may be required pursuant to this act.

39 "Development potential" means the maximum number of dwelling
40 units or square feet of nonresidential floor area that may be
41 constructed on a specified lot or in a specified zone under the master
42 plan and land use regulations in effect on the date of the adoption of
43 the development transfer ordinance, and in accordance with
44 recognized environmental constraints.

45 "Development regulation" means a zoning ordinance, subdivision
46 ordinance, site plan ordinance, official map ordinance or other

1 municipal regulation of the use and development of land, or
2 amendment thereto adopted and filed pursuant to this act.

3 "Development transfer" or "development potential transfer" means
4 the conveyance of development potential, or the permission for
5 development, from one or more lots to one or more other lots by deed,
6 easement, or other means as authorized by ordinance.

7 "Development transfer bank" means a development transfer bank
8 established pursuant to section 22 of P.L. , c. (C.) (pending
9 before the Legislature as this bill) or the State TDR Bank.

10 "Drainage" means the removal of surface water or groundwater
11 from land by drains, grading or other means and includes control of
12 runoff during and after construction or development to minimize
13 erosion and sedimentation, to assure the adequacy of existing and
14 proposed culverts and bridges, to induce water recharge into the
15 ground where practical, to lessen nonpoint pollution, to maintain the
16 integrity of stream channels for their biological functions as well as for
17 drainage, and the means necessary for water supply preservation or
18 prevention or alleviation of flooding.

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

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

23 "Final approval" means the official action of the planning board
24 taken on a preliminarily approved major subdivision or site plan, after
25 all conditions, engineering plans and other requirements have been
26 completed or fulfilled and the required improvements have been
27 installed or guarantees properly posted for their completion, or
28 approval conditioned upon the posting of such guarantees.

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

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

34 "Governing body" means the chief legislative body of the
35 municipality. In municipalities having a board of public works,
36 "governing body" means such board.

37 "Historic district" means one or more historic sites and intervening
38 or surrounding property significantly affecting or affected by the
39 quality and character of the historic site or sites.

40 "Historic site" means any real property, man-made structure,
41 natural object or configuration or any portion or group of the
42 foregoing of historical, archeological, cultural, scenic or architectural
43 significance.

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

46 "Interested party" means: (a) in a criminal or quasi-criminal

1 proceeding, any citizen of the State of New Jersey; and (b) in the case
2 of a civil proceeding in any court or in an administrative proceeding
3 before a municipal agency, any person, whether residing within or
4 without the municipality, whose right to use, acquire, or enjoy
5 property is or may be affected by any action taken under this act, or
6 whose rights to use, acquire, or enjoy property under this act, or under
7 any other law of this State or of the United States have been denied,
8 violated or infringed by an action or a failure to act under this act.

9 "Land" includes improvements and fixtures on, above or below the
10 surface.

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

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

22 (cf: P.L.1991, c.412, s.2)

23

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

26 3.2. "Maintenance guarantee" means any security which may be
27 accepted by a municipality for the maintenance of any improvements
28 required by this act, including but not limited to surety bonds, letters
29 of credit under the circumstances specified in section 16 of P.L.1991,
30 c.256 (C.40:55D-53.5), and cash.

31 "Major subdivision" means any subdivision not classified as a minor
32 subdivision.

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

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

41 "Minor site plan" means a development plan of one or more lots
42 which (1) proposes new development within the scope of development
43 specifically permitted by ordinance as a minor site plan; (2) does not
44 involve planned development, any new street or extension of any
45 off-tract improvement which is to be prorated pursuant to section 30
46 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information

1 reasonably required in order to make an informed determination as to
2 whether the requirements established by ordinance for approval of a
3 minor site plan have been met.

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

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

11 "Municipal agency" means a municipal planning board or board of
12 adjustment, or a governing body of a municipality when acting
13 pursuant to this act and any agency which is created by or responsible
14 to one or more municipalities when such agency is acting pursuant to
15 this act.

16 "Municipal resident" means a person who is domiciled in the
17 municipality.

18 "Nonconforming lot" means a lot, the area, dimension or location
19 of which was lawful prior to the adoption, revision or amendment of
20 a zoning ordinance, but fails to conform to the requirements of the
21 zoning district in which it is located by reason of such adoption,
22 revision or amendment.

23 "Nonconforming structure" means a structure the size, dimension
24 or location of which was lawful prior to the adoption, revision or
25 amendment of a zoning ordinance, but which fails to conform to the
26 requirements of the zoning district in which it is located by reasons of
27 such adoption, revision or amendment.

28 "Nonconforming use" means a use or activity which was lawful
29 prior to the adoption, revision or amendment of a zoning ordinance,
30 but which fails to conform to the requirements of the zoning district
31 in which it is located by reasons of such adoption, revision or
32 amendment.

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

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

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

40 "Offsite" means located outside the lot lines of the lot in question
41 but within the property, of which the lot is a part, which is the subject
42 of a development application or the closest half of the street or
43 right-of-way abutting the property of which the lot is a part.

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

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

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

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

13 (cf: P.L.1998, c.95, s.1)

14

15 35. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to
16 read as follows:

17 3.3. "Party immediately concerned" means for purposes of notice
18 any applicant for development, the owners of the subject property and
19 all owners of property and government agencies entitled to notice
20 under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

21 "Performance guarantee" means any security, which may be
22 accepted by a municipality, including but not limited to surety bonds,
23 letters of credit under the circumstances specified in section 16 of
24 P.L.1991, c.256 (C.40:55D-53.5), and cash.

25 "Planned commercial development" means an area of a minimum
26 contiguous or noncontiguous size as specified by ordinance to be
27 developed according to a plan as a single entity containing one or
28 more structures with appurtenant common areas to accommodate
29 commercial or office uses or both and any residential and other uses
30 incidental to the predominant use as may be permitted by ordinance.

31 "Planned development" means planned unit development, planned
32 unit residential development, residential cluster, planned commercial
33 development or planned industrial development.

34 "Planned industrial development" means an area of a minimum
35 contiguous or noncontiguous size as specified by ordinance to be
36 developed according to a plan as a single entity containing one or
37 more structures with appurtenant common areas to accommodate
38 industrial uses and any other uses incidental to the predominant use as
39 may be permitted by ordinance.

40 "Planned unit development" means an area with a specified
41 minimum contiguous or noncontiguous acreage of 10 acres or more to
42 be developed as a single entity according to a plan, containing one or
43 more residential clusters or planned unit residential developments and
44 one or more public, quasi-public, commercial or industrial areas in
45 such ranges of ratios of nonresidential uses to residential uses as shall
46 be specified in the zoning ordinance.

1 "Planned unit residential development" means an area with a
2 specified minimum contiguous or noncontiguous acreage of five acres
3 or more to be developed as a single entity according to a plan
4 containing one or more residential clusters, which may include
5 appropriate commercial, or public or quasi-public uses all primarily for
6 the benefit of the residential development.

7 "Planning board" means the municipal planning board established
8 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

9 "Plat" means a map or maps of a subdivision or site plan.

10 "Preliminary approval" means the conferral of certain rights
11 pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46;
12 C.40:55D-48; and C.40:55D-49) prior to final approval after specific
13 elements of a development plan have been agreed upon by the planning
14 board and the applicant.

15 "Preliminary floor plans and elevations" means architectural
16 drawings prepared during early and introductory stages of the design
17 of a project illustrating in a schematic form, its scope, scale and
18 relationship to its site and immediate environs.

19 "Public areas" means (1) public parks, playgrounds, trails, paths and
20 other recreational areas; (2) other public open spaces; (3) scenic and
21 historic sites; and (4) sites for schools and other public buildings and
22 structures.

23 "Public development proposal" means a master plan, capital
24 improvement program or other proposal for land development adopted
25 by the appropriate public body, or any amendment thereto.

26 "Public drainage way" means the land reserved or dedicated for the
27 installation of storm water sewers or drainage ditches, or required
28 along a natural stream or watercourse for preserving the biological as
29 well as drainage function of the channel and providing for the flow of
30 water to safeguard the public against flood damage, sedimentation and
31 erosion and to assure the adequacy of existing and proposed culverts
32 and bridges, to induce water recharge into the ground where practical,
33 and to lessen nonpoint pollution.

34 "Public open space" means an open space area conveyed or
35 otherwise dedicated to a municipality, municipal agency, board of
36 education, State or county agency, or other public body for
37 recreational or conservational uses.

38 "Public utility" means any public utility regulated by the Board of
39 Regulatory Commissioners and defined pursuant to R.S.48:2-13.

40 "Quorum" means the majority of the full authorized membership of
41 a municipal agency.

42 "Receiving zone" means an area or areas designated in a master
43 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
44 (C.40:55D-1 et seq.), within which development may be increased, and
45 which is otherwise consistent with the provisions of section 9 of
46 P.L. , c. (C.) (pending before the Legislature as this bill).

1 "Residential cluster" means a contiguous or noncontiguous area to
2 be developed as a single entity according to a plan containing
3 residential housing units which have a common or public open space
4 area as an appurtenance.

5 "Residential density" means the number of dwelling units per gross
6 acre of residential land area including streets, easements and open
7 space portions of a development.

8 "Resubdivision" means (1) the further division or relocation of lot
9 lines of any lot or lots within a subdivision previously made and
10 approved or recorded according to law or (2) the alteration of any
11 streets or the establishment of any new streets within any subdivision
12 previously made and approved or recorded according to law, but does
13 not include conveyances so as to combine existing lots by deed or
14 other instrument.

15 (cf: P.L.1995, c.364, s.1)

16
17 36. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to
18 read as follows:

19 3.4 "Sedimentation" means the deposition of soil that has been
20 transported from its site of origin by water, ice, wind, gravity or other
21 natural means as a product of erosion.

22 "Sending zone" means an area or areas designated in a master plan
23 and zoning ordinance, adopted pursuant to P.L.1975, c.291
24 (C.40:55D-1 et seq.), within which development may be restricted and
25 which is otherwise consistent with the provisions of section 8 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).

27 "Site plan" means a development plan of one or more lots on which
28 is shown (1) the existing and proposed conditions of the lot, including
29 but not necessarily limited to topography, vegetation, drainage, flood
30 plains, marshes and waterways, (2) the location of all existing and
31 proposed buildings, drives, parking spaces, walkways, means of
32 ingress and egress, drainage facilities, utility services, landscaping,
33 structures and signs, lighting, screening devices, and (3) any other
34 information that may be reasonably required in order to make an
35 informed determination pursuant to an ordinance requiring review and
36 approval of site plans by the planning board adopted pursuant to
37 article 6 of this act.

38 "Standards of performance" means standards (1) adopted by
39 ordinance pursuant to subsection 52d. regulating noise levels, glare,
40 earthborne or sonic vibrations, heat, electronic or atomic radiation,
41 noxious odors, toxic matters, explosive and inflammable matters,
42 smoke and airborne particles, waste discharge, screening of unsightly
43 objects or conditions and such other similar matters as may be
44 reasonably required by the municipality or (2) required by applicable
45 Federal or State laws or municipal ordinances.

46 "State Transfer of Development Rights Bank," or "State TDR

1 Bank," means the bank established pursuant to section 3 of P.L.1993,
2 c.339 (C.4:1C-51).

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

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

17 "Subdivision" means the division of a lot, tract or parcel of land
18 into two or more lots, tracts, parcels or other divisions of land for sale
19 or development. The following shall not be considered subdivisions
20 within the meaning of this act, if no new streets are created: (1)
21 divisions of land found by the planning board or subdivision committee
22 thereof appointed by the chairman to be for agricultural purposes
23 where all resulting parcels are 5 acres or larger in size, (2) divisions of
24 property by testamentary or intestate provisions, (3) divisions of
25 property upon court order, including but not limited to judgments of
26 foreclosure, (4) consolidation of existing lots by deed or other
27 recorded instrument and (5) the conveyance of one or more adjoining
28 lots, tracts or parcels of land, owned by the same person or persons
29 and all of which are found and certified by the administrative officer
30 to conform to the requirements of the municipal development
31 regulations and are shown and designated as separate lots, tracts or
32 parcels on the tax map or atlas of the municipality. The term
33 "subdivision" shall also include the term "resubdivision."

34 "Transcript" means a typed or printed verbatim record of the
35 proceedings or reproduction thereof.

36 "Variance" means permission to depart from the literal requirements
37 of a zoning ordinance pursuant to section 47 and subsection 29.2b.,
38 57c. and 57d. of this act.

39 "Zoning permit" means a document signed by the administrative
40 officer (1) which is required by ordinance as a condition precedent to
41 the commencement of a use or the erection, construction,
42 reconstruction, alteration, conversion or installation of a structure or
43 building and (2) which acknowledges that such use, structure or
44 building complies with the provisions of the municipal zoning
45 ordinance or variance therefrom duly authorized by a municipal agency

1 pursuant to sections 47 and 57 of this act.

2 (cf: P.L.1979, c.216, s.4)

3

4 37. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
5 read as follows:

6 19. Preparation; contents; modification.

7 a. The planning board may prepare and, after public hearing, adopt
8 or amend a master plan or component parts thereof, to guide the use
9 of lands within the municipality in a manner which protects public
10 health and safety and promotes the general welfare.

11 b. The master plan shall generally comprise a report or statement
12 and land use and development proposals, with maps, diagrams and
13 text, presenting, at least the following elements (1) and (2) and, where
14 appropriate, the following elements (3) through ~~[(13)]~~ (14) :

15 (1) A statement of objectives, principles, assumptions, policies and
16 standards upon which the constituent proposals for the physical,
17 economic and social development of the municipality are based;

18 (2) A land use plan element (a) taking into account and stating its
19 relationship to the statement provided for in paragraph (1) hereof, and
20 other master plan elements provided for in paragraphs (3) through
21 ~~[(13)]~~ (14) hereof and natural conditions, including, but not
22 necessarily limited to, topography, soil conditions, water supply,
23 drainage, flood plain areas, marshes, and woodlands; (b) showing the
24 existing and proposed location, extent and intensity of development of
25 land to be used in the future for varying types of residential,
26 commercial, industrial, agricultural, recreational, educational and other
27 public and private purposes or combination of purposes; and stating
28 the relationship thereof to the existing and any proposed zone plan and
29 zoning ordinance; and (c) showing the existing and proposed location
30 of any airports and the boundaries of any airport safety zones
31 delineated pursuant to the "Air Safety and Zoning Act of 1983,"
32 P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of
33 the standards of population density and development intensity
34 recommended for the municipality;

35 (3) A housing plan element pursuant to section 10 of P.L.1985,
36 c.222 (C.52:27D-310), including, but not limited to, residential
37 standards and proposals for the construction and improvement of
38 housing;

39 (4) A circulation plan element showing the location and types of
40 facilities for all modes of transportation required for the efficient
41 movement of people and goods into, about, and through the
42 municipality, taking into account the functional highway classification
43 system of the Federal Highway Administration and the types,
44 locations, conditions and availability of existing and proposed
45 transportation facilities, including air, water, road and rail;

46 (5) A utility service plan element analyzing the need for and

1 showing the future general location of water supply and distribution
2 facilities, drainage and flood control facilities, sewerage and waste
3 treatment, solid waste disposal and provision for other related utilities,
4 and including any storm water management plan required pursuant to
5 the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.). If a
6 municipality prepares a utility service plan element as a condition for
7 adopting a development transfer ordinance pursuant to subsection c.
8 of section 4 of P.L. _____, c. _____ (C. _____) (pending before the
9 Legislature as this bill), the plan element shall address the provision of
10 utilities in the receiving zone as provided thereunder;

11 (6) A community facilities plan element showing the existing and
12 proposed location and type of educational or cultural facilities, historic
13 sites, libraries, hospitals, firehouses, police stations and other related
14 facilities, including their relation to the surrounding areas;

15 (7) A recreation plan element showing a comprehensive system of
16 areas and public sites for recreation;

17 (8) A conservation plan element providing for the preservation,
18 conservation, and utilization of natural resources, including, to the
19 extent appropriate, energy, open space, water supply, forests, soil,
20 marshes, wetlands, harbors, rivers and other waters, fisheries,
21 endangered or threatened species wildlife and other resources, and
22 which systemically analyzes the impact of each other component and
23 element of the master plan on the present and future preservation,
24 conservation and utilization of those resources;

25 (9) An economic plan element considering all aspects of economic
26 development and sustained economic vitality, including (a) a
27 comparison of the types of employment expected to be provided by the
28 economic development to be promoted with the characteristics of the
29 labor pool resident in the municipality and nearby areas and (b) an
30 analysis of the stability and diversity of the economic development to
31 be promoted;

32 (10) A historic preservation plan element: (a) indicating the
33 location and significance of historic sites and historic districts; (b)
34 identifying the standards used to assess worthiness for historic site or
35 district identification; and (c) analyzing the impact of each component
36 and element of the master plan on the preservation of historic sites and
37 districts;

38 (11) Appendices or separate reports containing the technical
39 foundation for the master plan and its constituent elements;

40 (12) A recycling plan element which incorporates the State
41 Recycling Plan goals, including provisions for the collection,
42 disposition and recycling of recyclable materials designated in the
43 municipal recycling ordinance, and for the collection, disposition and
44 recycling of recyclable materials within any development proposal for
45 the construction of 50 or more units of single-family residential
46 housing or 25 or more units of multi-family residential housing and any

1 commercial or industrial development proposal for the utilization of
2 1,000 square feet or more of land; [and]

3 (13) A farmland preservation plan element, which shall include: an
4 inventory of farm properties and a map illustrating significant areas of
5 agricultural land; a statement showing that municipal ordinances
6 support and promote agriculture as a business; and a plan for
7 preserving as much farmland as possible in the short term by
8 leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et
9 al.) through a variety of mechanisms including, but not limited to,
10 utilizing option agreements, installment purchases, and encouraging
11 donations of permanent development easements ; and

12 (14) A development transfer plan element which sets forth the
13 public purposes, the locations of sending and receiving zones and the
14 technical details of a development transfer program based on the
15 provisions of section 5 of P.L. , c. (C.) (pending before the
16 Legislature as this bill).

17 c. The master plan and its plan elements may be divided into
18 subplans and subplan elements projected according to periods of time
19 or staging sequences.

20 d. The master plan shall include a specific policy statement
21 indicating the relationship of the proposed development of the
22 municipality, as developed in the master plan to (1) the master plans
23 of contiguous municipalities, (2) the master plan of the county in
24 which the municipality is located, (3) the State Development and
25 Redevelopment Plan adopted pursuant to the "State Planning Act,"
26 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
27 (4) the district solid waste management plan required pursuant to the
28 provisions of the "Solid Waste Management Act," P.L.1970, c.39
29 (C.13:1E-1 et seq.) of the county in which the municipality is located.
30 (cf: P.L.1999, c.180, s.2)

31

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

34 20. a. The governing body may authorize the planning board from
35 time to time to prepare a program of municipal capital improvement
36 projects projected over a term of at least 6 years, and amendments
37 thereto. Such program may encompass major projects being currently
38 undertaken or future projects to be undertaken, with Federal, State,
39 county and other public funds or under Federal, State or county
40 supervision. The first year of such program shall, upon adoption by
41 the governing body, constitute the capital budget of the municipality
42 as required by N.J.S.40A:4-43 et seq. The program shall classify
43 projects in regard to the urgency and need for realization, and shall
44 recommend a time sequence for their implementation. The program
45 may also contain the estimated cost of each project and indicate
46 probable operating and maintenance costs and probable revenues, if

1 any, as well as existing sources of funds or the need for additional
2 sources of funds for the implementation and operation of each project.
3 The program shall, as far as possible, be based on existing information
4 in the possession of the departments and agencies of the municipality
5 and shall take into account public facility needs indicated by the
6 prospective development shown in the master plan of the municipality
7 or as permitted by other municipal land use controls.

8 In preparing the program, the planning board shall confer, in a
9 manner deemed appropriate by the board, with the mayor, the chief
10 fiscal officer, other municipal officials and agencies, and the school
11 board or boards.

12 Any such program shall include an estimate of the displacement of
13 persons and establishments caused by each recommended project.

14 b. In addition to any of the requirements in subsection a. of this
15 section, whenever the planning board is authorized and directed to
16 prepare a capital improvements program, every municipal department,
17 authority or agency shall, upon request of the planning board, transmit
18 to said board a statement of all capital projects proposed to be
19 undertaken by such municipal department, authority or agency, during
20 the term of the program, for study, advice and recommendation by the
21 planning board.

22 c. In addition to all of the other requirements of this section, any
23 municipality that intends to provide for the transfer of development
24 within its jurisdiction pursuant to section 3 of P.L. , c. (C.)
25 (pending before the Legislature as this bill) shall include within its
26 capital improvement program provision for those capital projects to be
27 undertaken in the receiving zone or zones required as a condition for
28 adopting a development transfer ordinance pursuant to subsection b.
29 of section 4 of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

31 (cf: P.L.1975, c.291, s.20)

32

33 39. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to
34 read as follows:

35 52. A zoning ordinance may:

36 a. Limit and restrict buildings and structures to specified districts
37 and regulate buildings and structures according to their type and the
38 nature and extent of their use, and regulate the nature and extent of
39 the use of land for trade, industry, residence, open space or other
40 purposes.

41 b. Regulate the bulk, height, number of stories, orientation, and
42 size of buildings and the other structures; the percentage of lot or
43 development area that may be occupied by structures; lot sizes and
44 dimensions; and for these purposes may specify floor area ratios and
45 other ratios and regulatory techniques governing the intensity of land
46 use and the provision of adequate light and air, including, but not

- 1 limited to the potential for utilization of renewable energy sources.
- 2 c. Provide districts for planned developments; provided that an
3 ordinance providing for approval of subdivisions and site plans by the
4 planning board has been adopted and incorporates therein the
5 provisions for such planned developments in a manner consistent with
6 article 6 of [this act] P.L.1975, c.291 (C.40:55D-37 et seq.). The
7 zoning ordinance shall establish standards governing the type and
8 density, or intensity of land use, in a planned development. Said
9 standards shall take into account that the density, or intensity of land
10 use, otherwise allowable may not be appropriate for a planned
11 development. The standards may vary the type and density, or
12 intensity of land use, otherwise applicable to the land within a planned
13 development in consideration of the amount, location and proposed
14 use of open space; the location and physical characteristics of the site
15 of the proposed planned development; and the location, design and
16 type of dwelling units and other uses. Such standards may provide for
17 the clustering of development between noncontiguous parcels and
18 may, in order to encourage the flexibility of density, intensity of land
19 uses, design and type, authorize a deviation in various clusters from
20 the density, or intensity of use, established for an entire planned
21 development. The standards and criteria by which the design, bulk and
22 location of buildings are to be evaluated shall be set forth in the zoning
23 ordinance and all standards and criteria for any feature of a planned
24 development shall be set forth in such ordinance with sufficient
25 certainty to provide reasonable criteria by which specific proposals for
26 planned development can be evaluated.
- 27 d. Establish, for particular uses or classes of uses, reasonable
28 standards of performance and standards for the provision of adequate
29 physical improvements including, but not limited to, off-street parking
30 and loading areas, marginal access roads and roadways, other
31 circulation facilities and water, sewerage and drainage facilities;
32 provided that section 41 of [this act] P.L.1975, c.291 (C.40:55D-53)
33 shall apply to such improvements.
- 34 e. Designate and regulate areas subject to flooding (1) pursuant to
35 P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary
36 in the absence of appropriate flood hazard area designations pursuant
37 to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations
38 pursuant to P.L.1972, c.185 or minimum standards for local flood
39 fringe area regulation pursuant to P.L.1972, c.185.
- 40 f. Provide for conditional uses pursuant to section 54 of [this act]
41 P.L.1975, c.291 (C.40:55D-67).
- 42 g. Provide for senior citizen community housing.
- 43 h. Require as a condition for any approval which is required
44 pursuant to such ordinance and the provisions of this chapter, that no
45 taxes or assessments for local improvements are due or delinquent on
46 the property for which any application is made.

1 i. Provide for historic preservation pursuant to section 5 of
2 P.L.1991 c.199 (C.40:55D-65.1).

3 j. Provide for sending and receiving zones for a development
4 transfer program established pursuant to P.L. , c. (C.) (pending
5 before the Legislature as this bill).

6 (cf: P.L.1995, c.364, s.2)

7
8 40. This act shall take effect 180 days next following enactment,
9 except that section 12 shall take effect immediately.

10
11
12 STATEMENT

13
14 This bill would establish a Statewide transfer of development rights
15 (TDR) program, similar to the current Burlington County pilot TDR
16 program. It is the Legislature's intention in enacting this legislation to
17 create a mechanism to accommodate growth and preserve open space
18 and agricultural lands in a manner that is fair and equitable for all
19 landowners.

20 A TDR program involves the consideration of how the
21 municipality's future growth, capacity and preservation needs are to be
22 directed into sending and receiving zones. Specifically, this
23 consideration is to be reflected in a series of planning documents
24 which a municipality is required to adopt in order to effectuate a TDR
25 program. These documents include a utility service plan element and
26 development transfer plan element of the master plan, a capital
27 improvement program, a real estate market analysis, and a
28 development transfer ordinance which effectuates the plans.

29 The bill is designed to grant municipalities the flexibility to adopt
30 a TDR program that meets their specific growth and preservation
31 needs, subject to county planning board approval, in order to assure
32 that regional planning needs are taken into consideration.

33 The specific provisions of the bill are summarized below.

34
35 **Requirements**

36
37 The bill establishes a series of conditions that a municipality is
38 required to fulfill in order to be eligible to adopt a TDR ordinance.
39 Prior to the adoption or amendment of any development transfer
40 ordinance, a municipality shall have adopted a utility service plan
41 element, development transfer plan element and capital improvement
42 program under the "Municipal Land Use Law," as amended by this bill.

43 Additionally, the municipality's initial petition for endorsement of
44 its master plan by the State Planning Commission shall have been
45 approved. Prior to the adoption of such an ordinance, the municipal
46 planning board shall have conducted a real estate market analysis

1 which examines the relationship between the development rights
2 anticipated to be generated in the sending zones and the capacity of
3 designated receiving zones to accommodate the necessary
4 development.

5 The municipality shall adopt a development transfer plan element
6 of the master plan that includes:

7

8 * an estimate of the anticipated population and economic growth
9 in the municipality for the succeeding 10 years;

10 * the identification and description of all prospective sending and
11 receiving zones;

12 * an analysis of how the anticipated population growth in the
13 municipality is to be accommodated within the municipality in
14 general, and the receiving zone or zones in particular;

15 * an estimate of existing and proposed infrastructure of the
16 proposed receiving zone;

17 * a procedure and method for issuing the instruments necessary
18 to convey the development potential from the sending zone to
19 the receiving zone; and

20 * explicit planning objectives and design standards to govern the
21 review of applications for development in the receiving zone in
22 order to facilitate their review by the approving authority.

23

24 The absence of plan endorsement or the failure to have transferred
25 a sufficient degree of development potential within five years as
26 required pursuant to section 20 of the bill, shall constitute a rebuttable
27 presumption that the development transfer ordinance is no longer
28 reasonable.

29

30 **Sending and Receiving Zones**

31

32 The bill establishes the criteria governing which lands may be
33 included in sending zones, where development is to be restricted, and
34 receiving zones, where development is to be transferred.

35

36 **Sending Zone Requirements**

37

38 Sending zones shall be composed predominantly of land upon which
39 development is restricted or upon which development has been limited
40 because of the particular features of the land in question. The bill
41 provides examples, which include agricultural, woodland, floodplain,
42 wetlands, threatened or endangered species habitat, steeped sloped
43 land or other lands on which development activities are restricted by
44 federal, State or local laws or regulations, land substantially improved
45 or developed in a manner which presents a unique and distinctive
46 aesthetic, architectural or historical point of interest or other low

1 density improved or unimproved areas.

2

3 **Receiving Zone Requirements**

4

5 * The receiving zone shall be appropriate and suitable for
6 development and shall be at least sufficient to accommodate all
7 of the development potential of the sending zone.

8 * All infrastructure necessary to achieve the development
9 potential of the receiving zone shall either exist or be scheduled
10 to be provided.

11 * Any development to be undertaken in a receiving zone utilizing
12 density increases shall require the use of appropriate
13 instruments of transfer.

14

15 **Review of TDR Ordinance**

16

17 A TDR ordinance shall first go through a review by the county
18 planning board for an evaluation of:

19

20 * consistency with the county master plan;

21 * support of regional objectives for agricultural preservation,
22 natural resource management and protection, historic or
23 architectural conservation;

24 * consistency with reasonable population and economic forecasts
25 for the county; and

26 * sufficiency of the receiving zone to accommodate the
27 development potential that may be transferred from sending
28 zones and a reasonable assurance of marketability of any
29 instruments of transfer that may be created.

30

31 If the county does not recommend enactment and cannot resolve its
32 issues with the municipality, the municipality may petition the Office
33 of Smart Growth for a final determination.

34

35 **TDR Bank**

36

37 The bill authorizes a municipality or county to establish a TDR bank
38 for the purpose of facilitating the buying and selling of development
39 credits. Alternatively, a municipality or county may opt to use the
40 State TDR Bank for these purposes. The bank may purchase credits
41 from sending areas and apply for funds to purchase those credits. The
42 actions of the bank may not impair the private sale or transfer of
43 development potential.

1 **Existing Burlington County Program**

2

3 The bill grandfathers the existing Burlington County TDR Program
4 and authorizes Burlington County municipalities going forward to
5 either continue to utilize the existing pilot program or the Statewide
6 program being created by this bill. Additionally, Burlington County
7 municipalities may continue to utilize the Burlington County TDR
8 bank, the State TDR bank, or establish their own individual TDR
9 banks as provided in this bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2480

STATE OF NEW JERSEY

DATED: MARCH 4, 2004

The Assembly Environment and Solid Waste Committee reports favorably Assembly Bill No. 2480.

This bill would establish a Statewide transfer of development rights (TDR) program, similar to the current Burlington County pilot TDR program.

A TDR program involves the consideration of how the municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones. Specifically, this consideration is to be reflected in a series of planning documents which a municipality is required to adopt in order to effectuate a TDR program. These documents include a utility service plan element and development transfer plan element of the master plan, a capital improvement program, a real estate market analysis, and a development transfer ordinance ("TDR ordinance") which effectuates the plans.

The bill is designed to grant municipalities the flexibility to adopt a TDR program that meets their specific growth and preservation needs, subject to county planning board approval, in order to assure that regional planning needs are taken into consideration.

The specific provisions of the bill are summarized below.

Requirements

The bill establishes a series of conditions that a municipality is required to fulfill in order to be eligible to adopt a TDR ordinance. Prior to the adoption or amendment of any TDR ordinance, a municipality shall have adopted a utility service plan element, development transfer plan element and capital improvement program under the "Municipal Land Use Law," as amended by this bill. In addition, the municipality's initial petition for endorsement of its master plan by the State Planning Commission shall have been approved.

Prior to the adoption of a TDR ordinance, the municipal planning board shall have conducted a real estate market analysis which examines the relationship between the development rights anticipated

to be generated in the sending zones and the capacity of designated receiving zones to accommodate the necessary development.

The municipality shall adopt a development transfer plan element of the master plan that includes:

- * an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;
- * the identification and description of all prospective sending and receiving zones;
- * an analysis of how the anticipated population growth in the municipality is to be accommodated within the municipality in general, and the receiving zone or zones in particular;
- * an estimate of existing and proposed infrastructure of the proposed receiving zone;
- * a procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone; and
- * explicit planning objectives and design standards to govern the review of applications for development in the receiving zone in order to facilitate their review by the approving authority.

The absence of plan endorsement or the failure to have transferred a sufficient degree of development potential within five years as required pursuant to section 20 of the bill shall constitute a rebuttable presumption that the TDR ordinance is no longer reasonable.

Sending and Receiving Zones

The bill establishes the criteria governing which lands may be included in sending zones, where development is to be restricted, and receiving zones, where development is to be transferred.

Sending zones shall be composed predominantly of land upon which development is restricted or upon which development has been limited because of the particular features of the land in question. The bill provides examples, which include agricultural land, woodland, floodplain, wetlands, threatened or endangered species habitat, steeply sloped land or other lands on which development activities are restricted by federal, State or local laws or regulations, land substantially improved or developed in a manner which presents a unique and distinctive aesthetic, architectural or historical point of interest, or other low density improved or unimproved areas.

Receiving zones shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential of the sending zone. All infrastructure necessary to achieve the development potential of the receiving zone shall either exist or be scheduled to be provided. Further, any development to be undertaken in a receiving zone utilizing density increases shall require the use of appropriate instruments of transfer.

Review of TDR Ordinance

A TDR ordinance shall first go through a review by the county planning board for an evaluation of:

- * consistency with the county master plan;
- * support of regional objectives for agricultural preservation, natural resource management and protection, historic or architectural conservation;
- * consistency with reasonable population and economic forecasts for the county; and
- * sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

If the county does not recommend enactment and cannot resolve its issues with the municipality, the municipality may petition the Office of Smart Growth for a final determination.

TDR Bank

The bill authorizes a municipality or county to establish a TDR bank for the purpose of facilitating the buying and selling of development credits. Alternatively, a municipality or county may opt to use the existing State TDR Bank for these purposes. The bank may purchase credits from sending areas and apply for funds to purchase those credits. The actions of the bank may not impair the private sale or transfer of development potential.

In addition, the bill amends the current authority of the State TDR Bank to provide for the issue of planning assistance grants to municipalities for up to 50% of the cost incurred by a municipality in preparing the utility service plan element, development transfer plan element, real estate market analysis, and capital improvement program, or \$40,000, whichever is less. The bill provides that not more than \$1.5 million from the "1989 Development Potential Transfer Bank Fund" may be used for these grants.

Existing Burlington County Program

The bill grandfathers the existing Burlington County TDR Program and authorizes Burlington County municipalities going forward to either continue to utilize the existing pilot program or the Statewide program being created by this bill. The bill further provides that Burlington County municipalities may continue to utilize the Burlington County TDR bank, use the State TDR bank, or establish their own individual TDR banks as provided in this bill.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2480
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: APRIL 7, 2004

SUMMARY

- Synopsis:** Extends authority for municipalities to establish transfer of development rights programs and sets forth parameters for creation thereof.
- Type of Impact:** Reallocates funding from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank. Potential increase in property tax revenue in those municipalities with designated receiving zones. Potential start up and future costs to local governments associated with operating a transfer development bank.
- Agencies Affected:** Office of Smart Growth in DCA; Pinelands Commission; County Agriculture Development Boards; Counties; Municipalities; State Transfer of Development Rights Bank.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Reallocates \$20 million from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank.		
State Cost	Not more than \$400,000 for administrative costs and no more than \$1.5 million for planning assistance grants to municipalities. Increased State TDR Bank costs for loans and development potential credit purchases.		
Local Cost	Potential start up and future costs to local governments associated with operating a TDR bank.		
Local Revenue	Potential increase in property tax revenue in those municipalities with designated receiving zones.		

- * This bill would establish a Statewide transfer of development rights (TDR) program that involves the consideration of how the municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones.
- * The bill establishes the criteria governing which lands may be included in sending zones, where development is to be restricted, and receiving zones, where development is to be transferred.
- * The bill authorizes a municipality or county to establish a TDR bank for the purpose of facilitating the buying and selling of development credits or permits those local units to use the existing State TDR Bank for these purposes.

- * The bill also provides for the issue of planning assistance grants to municipalities for up to 50 percent of the cost incurred by a municipality in preparing the utility service plan element, development transfer plan element, real estate market analysis, and capital improvement program, or \$40,000, whichever is less.
- * The bill provides that not more than \$1.5 million from the \$20 million transferred from the "1989 Development Potential Transfer Bank Fund" to the State Transfer of Development Rights Bank be used for planning assistance grants.

BILL DESCRIPTION

Assembly Bill No. 2480 of 2004 would establish a Statewide transfer of development rights (TDR) program that involves the consideration of how a municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones. Specifically, this consideration is to be reflected in a series of planning documents which a municipality is required to adopt in order to effectuate a TDR program. These documents include a utility service plan element and development transfer plan element of the master plan, a capital improvement program, a real estate market analysis, and a development transfer ordinance ("TDR ordinance") which effectuates the plans.

The bill provides municipalities with the flexibility to adopt a TDR program that meets their specific growth and preservation needs, subject to county planning board approval, in order to assure that regional planning needs are taken into consideration.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) notes that this bill reallocates \$20 million from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank established pursuant to P.L.1993, c.339 (C.4:1C-49 et seq.), for the purpose of providing planning assistance grants to municipalities and loans or grants for the purchase of development potential to development transfer banks established by a municipality or county pursuant to this bill or P.L.1989, c.86 (C.40:55D-113 et seq.). Of the amount transferred no more than \$400,000 may be used for administrative costs and no more than \$1.5 million may be used to fund planning assistance grants to municipalities.

OLS notes that a county or municipality that establishes a development transfer bank will incur certain start up and continuing costs to enable the bank to purchase, sell, or exchange the development potential that is available for transfer from a sending zone. The costs associated with the establishment and maintenance of a development transfer bank will vary depending on the local government's development transfer ordinance. A county or municipality that has established a development transfer bank may apply for funds for the purchase of development potential under the provisions of the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c. 152 (C.13:8C-1 et seq.). It may also apply for funding from the State

Transfer of Development Rights Bank for either planning or development potential purchasing funds.

Section: *Local Government*

Analyst: *Pedro Carrasquillo*
Assistant Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1287

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 1, 2004

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator MARTHA W. BARK

District 8 (Burlington)

Co-Sponsored by:

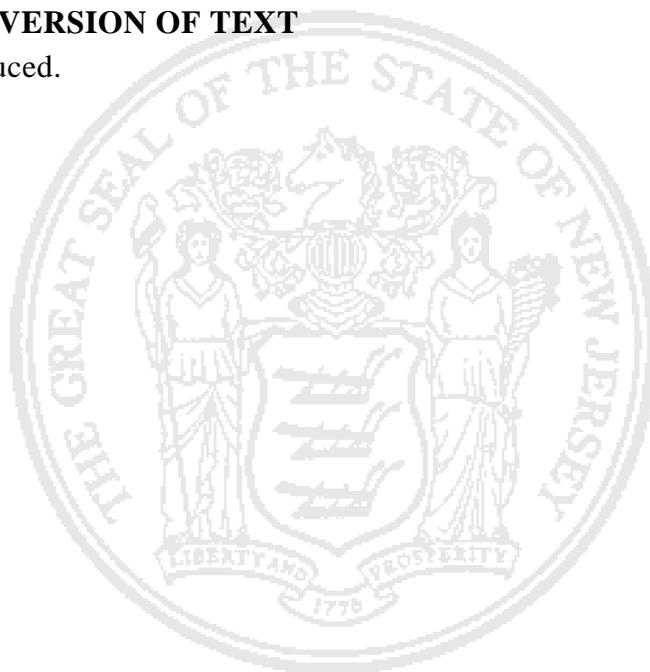
Senator Turner

SYNOPSIS

Extends authority for municipalities to establish transfer of development rights programs and sets forth parameters for creation thereof.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/23/2004)

1 AN ACT authorizing the transfer of development rights by
2 municipalities, amending P.L.1993, c.339, P.L.1983, c.32, and
3 amending and supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).
4

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

7
8 1. (New section) Sections 1 through 27 of this act shall be known
9 and may be cited as the "State Transfer of Development Rights Act."
10

11 2. (New section) The Legislature finds and declares that as the
12 most densely populated state in the nation, the State of New Jersey is
13 faced with the challenge of accommodating vital growth while
14 maintaining the environmental integrity, preserving the natural
15 resources, and strengthening the agricultural industry and cultural
16 heritage of the Garden State; that the responsibility for meeting this
17 challenge falls most heavily upon local government to appropriately
18 shape the land use patterns so that growth and preservation become
19 compatible goals; that until now municipalities in most areas of the
20 State have lacked effective and equitable means by which potential
21 development may be transferred from areas where preservation is most
22 appropriate to areas where growth can be better accommodated and
23 maximized; and that the tools necessary to meet the challenge of
24 balanced growth in an equitable manner in New Jersey must be made
25 available to local government as the architects of New Jersey's future.

26 The Legislature further finds and declares that the "Burlington
27 County Transfer of Development Rights Demonstration Act,"
28 P.L.1989, c.86 (C.40:55D-113 et al.), was enacted in 1989 as a pilot
29 transfer of development rights (TDR) program to demonstrate the
30 feasibility of TDR as a land use planning tool; and that the Burlington
31 County pilot program has been a success and should now be expanded
32 to the remainder of the State of New Jersey in a manner that is fair and
33 equitable to all landowners.

34 The Legislature therefore determines that it is in the public interest
35 to authorize all municipalities in the State to establish and implement
36 TDR programs.
37

38 3. (New section) a. The governing body of any municipality that
39 fulfills the criteria set forth in section 4 of P.L. , c . (C.)
40 (pending before the Legislature as this bill) may, by ordinance
41 approved by the county planning board, provide for the transfer of
42 development potential within its jurisdiction. The governing bodies of
43 two or more municipalities that fulfill the criteria set forth in section

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

Matter underlined thus is new matter.

1 4 of P.L. , c. (C.) (pending before the Legislature as this bill)
2 may, by substantially similar ordinances approved by their respective
3 county planning boards, provide for a joint program for the transfer of
4 development potential, including transfers from sending zones in one
5 municipality to receiving zones in the other, regardless of whether or
6 not those municipalities are situated within the same county. Any such
7 program shall be carried out by the municipal planning board or
8 boards.

9 A program may include the designation of one or more sending or
10 receiving zones.

11 b. The Office of Smart Growth shall provide such technical
12 assistance as may be requested by municipalities or a county planning
13 board, and as may be reasonably within the capacity of the office to
14 provide, in the preparation, implementation or review, as the case may
15 be, of the master plan elements required to have been adopted by the
16 municipality as a condition for adopting a development transfer
17 ordinance pursuant to section 4 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), capital improvement program or
19 development transfer ordinance.

20

21 4. (New section) Prior to the adoption or amendment of any
22 development transfer ordinance, a municipality shall:

23 a. Adopt a development transfer plan element of its master plan
24 pursuant to paragraph (14) of subsection b. of section 19 of P.L.1975,
25 c.291 (C.40:55D-28) in accordance with the requirements of section
26 5 of P.L. , c. (C.) (pending before the Legislature as this
27 bill);

28 b. Adopt a capital improvement program pursuant to section 20 of
29 P.L.1975, c.291 (C.40:55D-29) for the receiving zone, which includes
30 the location and cost of all infrastructure and a method of cost sharing
31 if any portion of the cost is to be assessed against developers pursuant
32 to section 30 of P.L.1975, c.291 (C.40:55D-42);

33 c. Adopt a utility service plan element of the master plan pursuant
34 to section 19 of P.L.1975, c.291 (C.40:55D-28) that specifically
35 addresses providing necessary utility services within any designated
36 receiving zone within a specified time period so that no development
37 seeking to utilize development potential transfer is unreasonably
38 delayed because utility services are not available;

39 d. Prepare a real estate market analysis pursuant to section 12 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 which examines the relationship between the development rights
42 anticipated to be generated in the sending zones and the capacity of
43 designated receiving zones to accommodate the necessary
44 development; and

45 e. Either receive approval of: (1) its initial petition for endorsement
46 of its master plan by the State Planning Commission pursuant to

1 P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted
2 pursuant thereto either individually, or as part of a county or regional
3 plan, provided that the petition included the development transfer
4 ordinance and supporting documentation, or (2) the development
5 transfer ordinance and supporting documentation as an amendment to
6 a previously approved petition for master plan endorsement by the
7 State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-
8 196 et seq.) and regulations adopted pursuant thereto.

9
10 5. (New section) In order to serve as the basis for a development
11 transfer ordinance pursuant to subsection a. of section 4 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill), a
13 development transfer plan element of a masterplan shall include:

14 a. an estimate of the anticipated population and economic growth
15 in the municipality for the succeeding 10 years;

16 b. the identification and description of all prospective sending and
17 receiving zones;

18 c. an analysis of how the anticipated population growth estimated
19 pursuant to subsection a. of this section is to be accommodated within
20 the municipality in general, and the receiving zone or zones in
21 particular;

22 d. an estimate of existing and proposed infrastructure of the
23 proposed receiving zone;

24 e. a presentation of the procedure and method for issuing the
25 instruments necessary to convey the development potential from the
26 sending zone to the receiving zone; and

27 f. explicit planning objectives and design standards to govern the
28 review of applications for development in the receiving zone in order
29 to facilitate their review by the approving authority.

30
31 6. (New section) a. Any municipality located in whole or in part
32 in the pinelands area, as defined in the "Pinelands Protection Act,"
33 P.L.1979, c.111 (C.13:18A-1 et seq.), shall submit the proposed
34 development transfer ordinance, development transfer and utility
35 service plan elements of the master plan, real estate market analysis,
36 and capital improvement program to the Pinelands Commission for
37 review for those areas included in that proposed ordinance that are
38 situated within the pinelands area. The Pinelands Commission shall
39 determine whether the proposed ordinance is compatible with the
40 provisions of the "Pinelands Development Credit Bank Act,"
41 P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent
42 with the comprehensive management plan adopted by the Pinelands
43 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the
44 commission determines that the proposed development transfer
45 ordinance is not compatible or consistent, the commission shall make
46 such recommendations as may be necessary to conform the proposed

1 ordinance with the comprehensive management plan. The municipality
2 shall not adopt the proposed ordinance unless the changes
3 recommended by the Pinelands Commission have been included in the
4 ordinance.

5 b. No development transfer ordinance that involves land in the
6 pinelands area shall take effect unless it has been certified by the
7 Pinelands Commission pursuant to the provisions of the "Pinelands
8 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the
9 comprehensive management plan.

10

11 7. (New section) A municipality which provides for the transfer of
12 development as set forth in section 3 of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall prepare or amend a
14 development transfer ordinance that designates sending and receiving
15 zones and is substantially consistent with or designed to effectuate the
16 development transfer plan element of the master plan adopted pursuant
17 to section 19 of P.L.1975, c.291 (C.40:55D-28) and the capital
18 improvement program adopted pursuant to section 20 of P.L.1975,
19 c.291 (C.40:55D-29). A governing body that chooses to adopt an
20 ordinance or amendment or revision thereto which in whole or in part
21 is inconsistent with the development transfer plan element of the
22 master plan or the capital improvement program may do so only by
23 affirmative vote of a majority of the full authorized membership of the
24 governing body, with the reasons of the governing body for so acting
25 set forth in a resolution and recorded in its minutes when adopting
26 such an ordinance.

27 In creating and establishing sending and receiving zones, the
28 governing body of the municipality shall designate tracts of land of
29 such size and number and with such boundaries, densities and
30 permitted uses as may be necessary to carry out the purposes of
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32 The adoption or amendment of a development transfer ordinance
33 shall be considered a change to the classifications or boundaries of a
34 zoning district and therefore subject to the notification requirements
35 of section 2 of P.L.1995, c.249 (C.40:55D-62.1).

36

37 8. (New section) a. A sending zone shall be composed
38 predominantly of land having one or more of the following
39 characteristics:

40 (1) agricultural land, woodland, floodplain, wetlands, threatened
41 or endangered species habitat, aquifer recharge area, recreation or
42 park land, waterfront, steeply sloped land or other lands on which
43 development activities are restricted or precluded by duly enacted
44 local laws or ordinances or by laws or regulations adopted by federal
45 or State agencies;

46 (2) land substantially improved or developed in a manner so as to

1 present a unique and distinctive aesthetic, architectural, or historical
2 point of interest in the municipality;

3 (3) other improved or unimproved areas that should remain at low
4 densities for reasons of inadequate transportation, sewerage or other
5 infrastructure, or for such other reasons as may be necessary to
6 implement the State Development and Redevelopment Plan adopted
7 pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and local or
8 regional plans.

9 b. Notwithstanding subsection a. of this section, lands permanently
10 restricted through development easements or conservation easements
11 existing prior to the adoption of a development transfer ordinance may
12 be included in a sending zone upon a finding by the municipal
13 governing body that this inclusion is in the public interest.

14 c. The development transfer ordinance may assign bonus
15 development potential to specified properties in the sending zone
16 based on specified criteria in order to encourage the permanent
17 protection of those lands pursuant to the development transfer
18 ordinance.

19

20 9. (New section) a. A receiving zone shall be appropriate and
21 suitable for development and shall be at least sufficient to
22 accommodate all of the development potential of the sending zone,
23 and at all times there shall be a reasonable likelihood that a balance is
24 maintained between sending zone land values and the value of the
25 transferable development potential.

26 b. The development potential of the receiving zone shall be
27 realistically achievable, considering: (1) the availability of all necessary
28 infrastructure; (2) all of the provisions of the zoning ordinance
29 including those related to density, lot size and bulk requirements; and
30 (3) given local land market conditions as of the date of the adoption
31 of the development transfer ordinance.

32 c. The development potential of the receiving zone shall be
33 consistent with the criteria established pursuant to subsection b. of
34 section 13 of P.L. , c. (C.) (pending before the Legislature
35 as this bill).

36 d. All infrastructure necessary to support the development of the
37 receiving zone as set forth in the zoning ordinance shall either exist or
38 be scheduled to be provided so that no development requiring the
39 purchase of transferable development potential shall be unreasonably
40 delayed because the necessary infrastructure will not be available due
41 to any action or inaction by the municipality.

42 e. No density increases may be achieved in a receiving zone
43 without the use of appropriate instruments of transfer.

44

45 10. (New section) Except as otherwise provided in this section, a
46 development transfer ordinance shall provide that, on granting a

1 variance under subsection d. of section 57 of P.L.1975, c.291
2 (C.40:55D-70) that increases the development potential of a parcel of
3 property not in the designated receiving zone for which the variance
4 has been granted by more than 5%, that parcel of property shall
5 constitute a receiving zone and the provisions of the ordinance for
6 receiving zones shall apply with respect to the amount of development
7 potential required to implement that variance.

8 This section shall not apply to any development that fulfills the
9 definition of a minor site plan or minor subdivision.

10
11 11. (New section) a. A development transfer ordinance shall
12 provide for the issuance of such instruments as may be necessary and
13 the adoption of procedures for recording the permitted use of the land
14 at the time of the recording, the separation of the development
15 potential from the land, and the recording of the allowable residual use
16 of the land upon separation of the development potential.

17 b. A development transfer ordinance shall specifically provide that
18 upon the transfer of development potential from a sending zone, the
19 owner of the property from which the development potential has been
20 transferred shall cause a statement containing the conditions of the
21 transfer and the terms of the restrictions of the use and development
22 of the land to be attached to and recorded with the deed of the land in
23 the same manner as the deed was originally recorded. These
24 restrictions and conditions shall state that any development
25 inconsistent therewith is expressly prohibited, shall run with the land,
26 and shall be binding upon the landowner and every successor in
27 interest thereto.

28 c. The restrictions shall be expressly enforceable by the
29 municipality and the county in which the property is located, any
30 interested party, and the State of New Jersey.

31 d. All development potential transfers shall be recorded in the
32 manner of a deed in the book of deeds in the office of the county clerk
33 or county register of deeds and mortgages, as appropriate. This
34 recording shall specify the lot and block number of the parcel in the
35 sending zone from which the development potential was transferred
36 and the lot and block number of the parcel in the receiving zone to
37 which the development potential was transferred.

38 e. All development potential transfers also shall be recorded with
39 the State Transfer of Development Rights Bank in the Development
40 Potential Transfer Registry as required pursuant to section 5 of
41 P.L.1993, c.339 (C.4:1C-53).

42
43 12. (New section) a. Prior to the final adoption of a development
44 transfer ordinance or any significant amendment to an existing
45 development transfer ordinance, the planning board shall conduct a
46 real estate market analysis of the current and future land market which

1 examines the relationship between the development rights anticipated
2 to be generated in the sending zone and the likelihood of their
3 utilization in the designated receiving zone. The analysis shall include
4 thorough consideration of the extent of development projected for the
5 receiving zone and the likelihood of its achievement given current and
6 projected market conditions in order to assure that the designated
7 receiving zone has the capacity to accommodate the development
8 rights anticipated to be generated in the sending zone. The real estate
9 market analysis shall conform to rules and regulations adopted
10 pursuant to subsection c. of this section.

11 b. Upon completion of the real estate market analysis and at a
12 meeting of the planning board held prior to the meeting at which the
13 development transfer ordinance receives first reading, the planning
14 board shall hold a hearing on the real estate market analysis.

15 The hearing shall be held in accordance with the provisions of
16 subsections a. through f. of section 6 of P.L.1975, c.291 (C.40:55D-
17 10).

18 c. The Commissioner of Community Affairs, in consultation with
19 the board of directors of the State Transfer of Development Rights
20 Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-
21 51), shall within 180 days of the enactment of P.L. , c. (C.)
22 (pending before the Legislature as this bill), adopt rules and
23 regulations which set forth the required contents of the real estate
24 market analysis.

25

26 13. (New section) a. Prior to adoption of a development transfer
27 ordinance or of any amendment of an existing development transfer
28 ordinance, the municipality shall submit a copy of the proposed
29 ordinance, copies of the development transfer and utility service plan
30 elements of the master plan adopted pursuant to section 19 of
31 P.L.1975, c.291 (C.40:55D-28) and capital improvement program
32 adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29),
33 proposed municipal master plan changes necessary for the enactment
34 of the development transfer ordinance, and the real estate market
35 analysis to the county planning board. If the ordinance and master
36 plan changes involve agricultural land, then the county agriculture
37 development board shall also be provided information identical to that
38 provided to the county planning board.

39 b. The county planning board, upon receiving the proposed
40 development transfer ordinance and accompanying documentation,
41 shall conduct a review of the proposed ordinance with regard to the
42 following criteria:

43 (1) consistency with the adopted master plan of the county;

44 (2) support of regional objectives for agricultural land
45 preservation, natural resource management and protection, historic or
46 architectural conservation, or the preservation of other public values

1 as enumerated in subsection a. of section 8 of P.L. , c. (C.)
2 (pending before the Legislature as this bill);

3 (3) consistency with reasonable population and economic forecasts
4 for the county; and

5 (4) sufficiency of the receiving zone to accommodate the
6 development potential that may be transferred from sending zones and
7 a reasonable assurance of marketability of any instruments of transfer
8 that may be created.

9

10 14. (New section) a. Within 60 days after receiving a proposed
11 development transfer ordinance and accompanying documentation
12 transmitted pursuant to section 13 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), the county planning board
14 shall submit to the municipality formal comments detailing its review
15 and shall either recommend or not recommend enactment of the
16 proposed development transfer ordinance. If enactment of the
17 proposed ordinance is recommended, the municipality may proceed
18 with adoption of the ordinance. Failure to submit recommendations
19 within the 60-day period shall constitute recommendation of the
20 ordinance.

21 b. The CADB shall review a proposed development transfer
22 ordinance and accompanying documentation within 30 days of receipt
23 thereof, and shall submit such written recommendations as it deems
24 appropriate, to the county planning board.

25 c. If the county planning board does not recommend enactment, the
26 reasons therefor shall be clearly stated in the formal comments. If the
27 objections of the county planning board cannot be resolved to the
28 satisfaction of both the municipality and the county planning board
29 within an additional 30 days, the municipality shall petition the Office
30 of Smart Growth to render a final determination pursuant to section
31 15 of P.L. , c. (C.) (pending before the Legislature as this
32 bill).

33

34 15. When the Office of Smart Growth receives a petition pursuant
35 to subsection c. of section 14 of P.L. , c. (C.) (pending
36 before the Legislature as this bill), it shall review the petition, the
37 record of comment of the county planning board, any supporting
38 documentation submitted by the municipality, and any comments
39 received from property owners in the sending or receiving zones and
40 other members of the public. Within 60 days after receipt of the
41 petition, the Office of Smart Growth shall approve, approve with
42 conditions, or disapprove the proposed development transfer
43 ordinance, stating in writing the reasons therefor. The basis for review
44 by the Office of Smart Growth shall be:

45 a. compliance of the proposed development transfer ordinance with
46 the provisions of P.L. , c. (C.) (pending before the

1 Legislature as this bill);

2 b. accuracy of the information developed in the proposed
3 development transfer ordinance, the development transfer and utility
4 service plan elements of the master plan adopted pursuant to section
5 19 of P.L.1975, c.291 (C.40:55D-28), the real estate market analysis
6 and capital improvement program adopted pursuant to section 20 of
7 P.L.1975, c.291 (C.40:55D-29);

8 c. an assessment of the potential for successful implementation of
9 the proposed development transfer ordinance; and

10 d. consistency with any plan that applies to the municipality that
11 has been endorsed by the State Planning Commission pursuant to
12 P.L.1985, c.398 (C.52:18A-196 et al.) and its implementing
13 regulations.

14

15 16. If the Office of Smart Growth determines, in response to a
16 municipal petition submitted pursuant to subsection c. of section 14 of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 that the proposed development transfer ordinance may be approved,
19 the municipality may proceed with adoption of the proposed
20 ordinance. If the Office of Smart Growth determines that the
21 proposed ordinance may be approved with conditions, the Office of
22 Smart Growth shall make such recommendations as may be necessary
23 for the proposed ordinance to be approved. The municipality shall not
24 adopt the proposed ordinance unless the changes recommended by the
25 Office of Smart Growth have been included in the proposed
26 ordinance. If the Office of Smart Growth determines that the
27 development transfer ordinance should be disapproved, the
28 municipality may not proceed with adoption of the proposed
29 ordinance.

30 The decision by the Office of Smart Growth on the petition shall
31 have the effect of a final agency action and any appeal of that decision
32 shall be made directly to the Appellate Division of the Superior Court.

33

34 17. (New section) a. The county clerk or county register of deeds
35 and mortgages, as the case may be, shall transmit to the assessor of the
36 municipality in which a development potential transfer has occurred a
37 record of the transfer and all pertinent information required to value,
38 assess, and tax the properties subject to the transfer in a manner
39 consistent with subsection b. of this section.

40 b. Property from which and to which development potential has
41 been transferred shall be assessed at its fair market value reflecting the
42 development transfer. Development potential that has been removed
43 from a sending zone but has not yet been employed in a receiving zone
44 shall not be assessed for real property taxation. Nothing in P.L. ,

45 c. (C.) (pending before the Legislature as this bill) shall be
46 construed to affect, or in any other way alter, the valuation

1 assessment, or taxation of land that is valued, assessed, and taxed
2 pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48
3 (C.54:4-23.1 et seq.).

4 c. Property in a sending or receiving zone that has been subject to
5 a development potential transfer shall be newly valued, assessed, and
6 taxed as of October 1 next following the development potential
7 transfer.

8 d. Development potential that has been conveyed from a property
9 pursuant to P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall not be subject to any fee imposed
11 pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

12

13 18. (New section) The absence of either of the following shall
14 constitute a rebuttable presumption that a development transfer
15 ordinance is no longer reasonable:

16 a. plan endorsement pursuant to P.L.1985, c.398 (C.52:18A-196
17 et seq.) or regulations adopted pursuant thereto is no longer in effect
18 for that municipality; or

19 b. a sufficient percentage of the development potential has not been
20 transferred in that municipality as provided in section 20 of P.L. ,

21 c. (C.) (pending before the Legislature as this bill).

22 If the ordinance of a municipality that is a participant of a joint
23 program pursuant to section 3 of P.L. , c. (C.) (pending
24 before the Legislature as this bill) is presumed to be no longer
25 reasonable pursuant to this section, then the ordinances of all
26 participating municipalities also shall be presumed to be no longer
27 reasonable.

28

29 19. (New section) A development transfer ordinance and real
30 estate market analysis shall be reviewed by the planning board and
31 governing body of the municipality at the end of three years
32 subsequent to its adoption. This review shall include an analysis of
33 development potential transactions in both the private and public
34 market, an update of current conditions in comparison to the
35 development transfer plan element of the master plan adopted pursuant
36 to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital
37 improvement program adopted pursuant to section 20 of P.L.1975,
38 c.291 (C.40:55D-29), and an assessment of the performance goals of
39 the development transfer program, including an evaluation of the units
40 constructed with and without the utilization of the development
41 transfer ordinance. A report of findings from this review shall be
42 submitted to the county planning board, the Office of Smart Growth
43 and, when the sending zone includes agricultural land, the CADB for
44 review and recommendations. Based on this review the municipality
45 shall act to maintain and enhance the value of development transfer
46 potential not yet utilized and, if necessary, amend the capital

1 improvement program adopted pursuant to section 20 of P.L.1975,
2 c.291 (C.40:55D-29), the development transfer plan element of the
3 master plan adopted pursuant to section 19 of P.L.1975, c.291
4 (C.40:55D-28) and the development transfer ordinance adopted
5 pursuant to P.L. , c. (C.) (pending before the Legislature as this
6 bill).

7
8 20. (New section) A development transfer ordinance and the real
9 estate market analysis also shall be reviewed by the planning board and
10 governing body of the municipality at the end of five years subsequent
11 to its adoption. This review shall provide for the examination of the
12 development transfer ordinance and the real estate market analysis to
13 determine whether the program for development transfer and the
14 permitted uses in the sending zone continue to remain economically
15 viable, and, if not, an update of the development transfer plan element
16 of the master plan adopted pursuant to section 19 of P.L.1975, c.291
17 (C.40:55D-28) and capital improvement program adopted pursuant to
18 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If at
19 least 25% of the development potential has not been transferred at the
20 end of this five-year period, the development transfer ordinance shall
21 be presumed to be no longer reasonable, including any zoning changes
22 adopted as part of the development transfer program, within 90 days
23 after the end of the five-year period unless one of the following is met:

24 a. the municipality immediately takes action to acquire or provide
25 for the private purchase of the difference between the development
26 potential already transferred and 25% of the total development transfer
27 potential created in the sending zone under the development transfer
28 ordinance;

29 b. a majority of the property owners in a sending zone who own
30 land from which the development potential has not yet been
31 transferred agree that the development transfer ordinance should
32 remain in effect;

33 c. the municipality can demonstrate either future success or can
34 demonstrate that low levels of development potential transfer activity
35 are due, not to ordinance failure, but to low levels of development
36 demand in general. This demonstration shall require the concurrence
37 of the county planning board and the Office of Smart Growth, and
38 shall be the subject of a municipal public hearing conducted prior to a
39 final determination regarding the future viability of the development
40 transfer program; or

41 d. the municipality can demonstrate that less than 25% of the
42 remaining development potential in the sending zone has been available
43 for sale at market value during the five-year period.

44
45 21. (New section) Following review of a development transfer
46 ordinance as provided in section 20 of P.L. , c. (C.) (pending

1 before the Legislature as this bill), the planning board and the
2 governing body of the municipality shall review the development
3 transfer ordinance and real estate market analysis at least once every
4 five years with every second review occurring in conjunction with the
5 review and update of the master plan of the municipality pursuant to
6 the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This
7 review shall provide for the examination of the ordinance and the real
8 estate market analysis to determine whether the program and uses
9 permitted in the sending zone continue to be economically viable and,
10 if not, an update of the development transfer plan element of the
11 master plan adopted pursuant to section 19 of P.L.1975, c.291
12 (C.40:55D-28) and capital improvement program adopted pursuant to
13 section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.

14 If 25% of the remaining development transfer potential at the start
15 of each five-year review period in the sending zone under the
16 development transfer ordinance has not been transferred during the
17 five-year period, the municipal governing body shall repeal the
18 development transfer ordinance, including any zoning changes adopted
19 as part of the development transfer program, within 90 days after the
20 end of that five-year period unless the municipality meets one of the
21 standards established pursuant to section 20 of P.L. , c. (C.)
22 (pending before the Legislature as this bill).

23

24 22. (New section) a. The governing body of any municipality that
25 has adopted a development transfer ordinance, or the governing body
26 of any county in which at least one municipality has adopted a
27 development transfer ordinance, may provide for the purchase, sale,
28 or exchange of the development potential that is available for transfer
29 from a sending zone by the establishment of a development transfer
30 bank. Alternatively, the governing body of any municipality which has
31 adopted a development transfer ordinance and has not established a
32 municipal development transfer bank may either utilize the State TDR
33 Bank or a county development transfer bank for these purposes,
34 provided that the county in which the municipality is situated has
35 established such a bank.

36 b. Any development transfer bank established by a municipality or
37 county shall be governed by a board of directors comprising five
38 members appointed by the governing body of the municipality or
39 county, as the case may be. The members shall have expertise in either
40 banking, law, land use planning, natural resource protection, historic
41 site preservation or agriculture. For the purposes of P.L. , c.
42 (C.) (pending before the Legislature as this bill) and the "Local
43 Bond Law," N.J.S.40A:2-1 et seq., a purchase by the bank shall be
44 considered an acquisition of lands for public purposes.

45

46 23. (New section) a. A development transfer bank may purchase

1 property in a sending zone if adequate funds have been provided for
2 these purposes and the person from whom the development potential
3 is to be purchased demonstrates possession of marketable title to the
4 property, is legally empowered to restrict the use of the property in
5 conformance with P.L. , c. (C.) (pending before the
6 Legislature as this bill), and certifies that the property is not otherwise
7 encumbered or transferred.

8 b. The development transfer bank may, for the purposes of its own
9 development potential transactions, establish a municipal average of
10 the value of the development potential of all property in a sending
11 zone of a municipality within its jurisdiction, which value shall
12 generally reflect market value prior to the effective date of the
13 development transfer ordinance. The establishment of this municipal
14 average shall not prohibit the purchase of development potential for
15 any price by private sale or transfer, but shall be used only when the
16 development transfer bank itself is purchasing the development
17 potential of property in the sending zone. Several average values in
18 any sending zone may be established for greater accuracy of valuation.

19 c. The development transfer bank may sell, exchange, or otherwise
20 convey the development potential of property that it has purchased or
21 otherwise acquired pursuant to the provisions of P.L. , c. (C.)
22 (pending before the Legislature as this bill), but only in a manner that
23 does not substantially impair the private sale or transfer of
24 development potential.

25 d. When a sending zone includes agricultural land, a development
26 transfer bank shall, when considering the purchase of development
27 potential based upon values derived by municipal averaging, submit the
28 municipal average arrived at pursuant to subsection b. of this section
29 for review and comment to the CADB. The development transfer
30 bank shall coordinate the development transfer program with the
31 farmland preservation programs established pursuant to the
32 "Agriculture Retention and Development Act," P.L.1983, c.32
33 (C.4:1C-11 et al.) and the "Garden State Preservation Trust Act,"
34 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) to the
35 maximum extent practicable and feasible.

36 e. A development transfer bank may apply for funds for the
37 purchase of development potential under the provisions of sections 1
38 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), or any other act
39 providing funds for the purpose of acquiring and developing land for
40 recreation and conservation purposes consistent with the provisions
41 and conditions of those acts.

42 f. A development transfer bank may apply for matching funds for
43 the purchase of development potential under the provisions of the
44 "Garden State Preservation Trust Act," sections 1 through 42 of
45 P.L.1999, c.152 (C.13:8C-1 et seq.) for the purpose of farmland
46 preservation and agricultural development consistent with the

1 provisions and conditions of that act and the "Agriculture Retention
2 and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.). In addition,
3 a development transfer bank may apply to the State Transfer of
4 Development Rights Bank established pursuant to section 3 of
5 P.L.1993, c.339 (C.4:1C-51) for either planning or development
6 potential purchasing funds, or both, as provided pursuant to section 4
7 of P.L.1993, c.339 (C.4:1C-52).

8
9 24. (New section) If the governing body of a county provides for
10 the acquisition of a development easement under the provisions of the
11 "Agriculture Retention and Development Act," P.L.1983, c.32
12 (C.4:1C-11 et al.) or the "Garden State Preservation Trust Act,"
13 sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), it may
14 sell the development potential associated with the development
15 easement subject to the terms and conditions of the development
16 transfer ordinance adopted pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill); provided that if the
18 development easement was purchased using moneys provided pursuant
19 to the "Garden State Preservation Trust Act," sections 1 through 42
20 of P.L.1999, c.152 (C.13:8C-1 et seq.), a percentage of all revenues
21 generated through the resale of the development potential shall be
22 refunded to the State in an amount equal to the State's percentage
23 contribution to the original development easement purchase.
24 Notwithstanding the foregoing, such refund shall not be paid to the
25 State in the event the State Treasurer determines that such refund
26 would adversely affect the tax-exempt status of any bonds authorized
27 pursuant to the "Garden State Preservation Trust Act," sections 1
28 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.). This repayment
29 shall be made within 90 days after the end of the calendar year in
30 which the sale occurs.

31
32 25. (New section) Agricultural land involved in an approved
33 development transfer ordinance shall be provided the right to farm
34 benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et
35 al.) and other benefits that may be provided pursuant to the
36 "Agriculture Retention and Development Act," P.L.1983, c.32
37 (C.4:1C-11 et seq.).

38
39 26. (New section) a. The governing body of a municipality that
40 adopts a development transfer ordinance shall annually prepare and
41 submit a report on activity undertaken pursuant to the development
42 transfer ordinance to the county planning board.

43 b. The county planning board shall submit copies of these reports
44 along with an analysis of the effectiveness of the ordinances in
45 achieving the purposes of P.L. , c. (C.) (pending before the
46 Legislature as this bill) to the State Planning Commission on July 1 of

1 the third year next following enactment of P.L. , c. (C.)
2 (pending before the Legislature as this bill) and annually thereafter.

3
4 27. (New section) a. Except as provided otherwise pursuant to
5 subsections b. and c. of this section, the provisions of P.L. , c.
6 (C.) (pending before the Legislature as this bill) shall not apply or
7 be construed to nullify any development transfer ordinance adopted by
8 a municipality in Burlington County pursuant to P.L.1989, c.86
9 (C.40:55D-113 et al.) prior to the effective date of P.L. , c.
10 (C.) (pending before the Legislature as this bill).

11 b. On or after the effective date of P.L. , c. (C.) (pending
12 before the Legislature as this bill), any municipality in Burlington
13 County may adopt a development transfer ordinance either pursuant
14 to P.L.1989, c.86 (C.40:55D-113 et al.) or P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 c. Any municipality in Burlington County may utilize a
17 development transfer bank established by the municipality or county
18 pursuant to P.L. , c. (C.) (pending before the Legislature as
19 this bill), by the municipality or Burlington County pursuant to
20 P.L.1989, c.86 (C.40:55D-113 et al.), or by the State pursuant to
21 P.L.1993, c.339 (C.4:1C-49 et seq.) or P.L. , c. (C.) (pending
22 before the Legislature as this bill).

23
24 28. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read
25 as follows:

26 24. a. Any landowner applying to the board to sell a development
27 easement pursuant to section 17 of P.L.1983, c.32 (C.4:1C-24) shall
28 offer to sell the development easement at a price which, in the opinion
29 of the landowner, represents a fair value of the development potential
30 of the land for nonagricultural purposes, as determined in accordance
31 with the provisions of [this act] P.L.1983, c.32.

32 b. Any offer shall be reviewed and evaluated by the board and the
33 committee in order to determine the suitability of the land for
34 development easement purchase. Decisions regarding suitability shall
35 be based on the following criteria:

36 (1) Priority consideration shall be given, in any one county, to
37 offers with higher numerical values obtained by applying the following
38 formula:

39
40 nonagricultural - agricultural - landowner's
41 developmental value value asking price
42 -----
43 nonagricultural - agricultural
44 development value value
45

46 (2) The degree to which the purchase would encourage the

1 survivability of the municipally approved program in productive
2 agriculture; and

3 (3) The degree of imminence of change of the land from productive
4 agriculture to nonagricultural use.

5 The board and the committee shall reject any offer for the sale of
6 development easements which is unsuitable according to the above
7 criteria and which has not been approved by the board and the
8 municipality.

9 c. Two independent appraisals paid for by the board shall be
10 conducted for each parcel of land so offered and deemed suitable. The
11 appraisals shall be conducted by independent, professional appraisers
12 selected by the board and the committee from among members of
13 recognized organizations of real estate appraisers. The appraisals shall
14 determine the current overall value of the parcel for nonagricultural
15 purposes, as well as the current market value of the parcel for
16 agricultural purposes. The difference between the two values shall
17 represent an appraisal of the value of the development easement. If
18 Burlington County or a municipality therein has established a
19 development transfer bank pursuant to the provisions of P.L.1989,
20 c.86 (C.40:55D-113 et seq.) or if any county or any municipality in
21 any county has established a development transfer bank pursuant to
22 section 22 of P.L. , c. (C.) (pending before the Legislature
23 as this bill), the municipal average of the value of the development
24 potential of property in a sending zone established by the bank may be
25 the value used by the board in determining the value of the
26 development easement. If a development easement is purchased using
27 moneys appropriated from the fund, the State shall provide no more
28 than 80%, except 100% under emergency conditions specified by the
29 committee pursuant to rules or regulations, of the cost of the
30 appraisals conducted pursuant to this section.

31 d. Upon receiving the results of the appraisals, or in Burlington
32 county or a municipality therein or elsewhere where a municipal
33 average has been established under [P.L.1989, c.86 (C.40:55D-113 et
34 seq.)] subsection c. of this section, upon receiving an application from
35 the landowners, the board and the committee shall compare the
36 appraised value, or the municipal average, as the case may be, and the
37 landowner's offer and, pursuant to the suitability criteria established in
38 subsection b. of this section:

39 (1) Approve the application to sell the development easement and
40 rank the application in accordance with the criteria established in
41 subsection b. of this section; or

42 (2) Disapprove the application, stating the reasons therefor.

43 e. Upon approval by the committee and the board, the secretary is
44 authorized to provide the board, within the limits of funds
45 appropriated therefor, an amount equal to no more than 80%, except
46 100% under emergency conditions specified by the committee

1 pursuant to rules or regulations, of the purchase price of the
2 development easement, as determined pursuant to the provisions of
3 this section. The board shall provide its required share and accept the
4 landowner's offer to sell the development easement. The acceptance
5 shall cite the specific terms, contingencies and conditions of the
6 purchase.

7 f. The landowner shall accept or reject the offer within 30 days of
8 receipt thereof. Any offer not accepted within that time shall be
9 deemed rejected.

10 g. Any landowner whose application to sell a development
11 easement has been rejected for any reason other than insufficient funds
12 may not reapply to sell a development easement on the same land
13 within two years of the original application.

14 h. No development easement shall be purchased at a price greater
15 than the appraised value determined pursuant to subsection c. of this
16 section or the municipal average, as the case may be.

17 i. The appraisals conducted pursuant to this section or the fair
18 market value of land restricted to agricultural use shall not be used to
19 increase the assessment and taxation of agricultural land pursuant to
20 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1
21 et seq.).

22 j. (1) In determining the suitability of land for development
23 easement purchase, the board and the committee may also include as
24 additional factors for consideration the presence of a historic building
25 or structure on the land and the willingness of the landowner to
26 preserve that building or structure, but only if the committee first
27 adopts, pursuant to the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.), rules and regulations implementing this
29 subsection. The committee may, by rule or regulation adopted
30 pursuant to the "Administrative Procedure Act," assign any such
31 weight it deems appropriate to be given to these factors.

32 (2) The provisions of paragraph (1) of this subsection may also be
33 applied in determining the suitability of land for fee simple purchase
34 for farmland preservation purposes as authorized by P.L.1983, c.31
35 (C.4:1C-1 et seq.), P.L.1983, c.32 (C.4:1C-11 et seq.), and P.L.1999,
36 c.152 (C.13:8C-1 et seq.).

37 (3) (a) For the purposes of paragraph (1) of this subsection:
38 "historic building or structure" means the same as that term is defined
39 pursuant to subsection c. of section 2 of P.L.2001, c.405
40 (C.13:8C-40.2).

41 (b) For the purposes of paragraph (2) of this subsection, "historic
42 building or structure" means the same as that term is defined pursuant
43 to subsection c. of section 1 of P.L.2001, c.405 (C.13:8C-40.1).

44 (cf: P.L.2001, c.405, s.3)

45

46 29. Section 2 of P.L.1993, c.339 (C.4:1C-50) is amended to read

1 as follows:

2 2. As used in this act:

3 "Board" means the board of directors of the State Transfer of
4 Development Rights Bank established pursuant to section 3 of [this
5 act] P.L.1993, c.339 (C.4:1C-51);

6 "Development potential" means the maximum number of dwelling
7 units or square feet of nonresidential floor area that may be
8 constructed on a specified lot or in a specified zone under the master
9 plan and land use regulations in effect on the date of the adoption of
10 the development transfer ordinance, and in accordance with
11 recognized environmental constraints;

12 "Development transfer" means the conveyance of development
13 potential, or the permission for development, from one or more lots to
14 one or more other lots by deed, easement, or other means as
15 authorized by ordinance adopted pursuant to law;

16 "Instrument" means the easement, credit, or other deed restriction
17 used to record a development transfer; and

18 "State Transfer of Development Rights Bank," "bank" or "State
19 TDR Bank" means the bank established pursuant to section 3 of [this
20 act, and shall constitute the development potential transfer bank for
21 the purposes of P.L.1989, c.183] P.L.1993, c.339 (C.4:1C-51).

22 (cf: P.L.1993, c.339, s.2)

23

24 30. Section 4 of P.L.1993, c.339 (C.4:1C-52) is amended to read
25 as follows:

26 4. The board shall have the following powers:

27 a. To purchase, or to provide matching funds for the purchase of
28 80% of, the value of development potential and to otherwise facilitate
29 development transfers, from the owner of record of the property from
30 which the development potential is to be transferred or from any
31 person, or entity, public or private, holding the interest in development
32 potential that is subject to development transfer; provided that, in the
33 case of providing matching funds for the purchase of 80% of the value
34 of development potential, the remaining 20% of that value is
35 contributed by the affected municipality or county, or both, after
36 public notice thereof in the New Jersey Register and in one newspaper
37 of general circulation in the area affected by the purchase. The
38 remaining 20% of the value of the development potential to be
39 contributed by the affected municipality or county, or both, to match
40 funds provided by the board, may be obtained by purchase from, or
41 donation by, the owner of record of the property from which the
42 development potential is to be transferred or from any person, or
43 entity, public or private, holding the interest in development potential
44 that is subject to development transfer. The value of development
45 potential may be determined by either appraisal, municipal averaging
46 based upon appraisal data, or by a formula supported by appraisal

- 1 data. The board may also engage in development transfer by sale,
2 exchange, or other method of conveyance, provided that in doing so,
3 the board shall not substantially impair the private sale, exchange or
4 other method of conveyance of development potential. The board may
5 not, nor shall anything in this act be construed as permitting the board
6 to, engage in development transfer from one municipality to another,
7 which transfer is not in accordance with the ordinances of both
8 municipalities;
- 9 b. To adopt and, from time to time, amend or repeal suitable
10 bylaws for the management of its affairs;
- 11 c. To adopt and use an official seal and alter that seal at its
12 pleasure;
- 13 d. To apply for, receive, and accept, from any federal, State, or
14 other public or private source, grants or loans for, or in aid of, the
15 board's authorized purposes;
- 16 e. To enter into any agreement or contract, execute any legal
17 document, and perform any act or thing necessary, convenient, or
18 desirable for the purposes of the board or to carry out any power
19 expressly given in this act;
- 20 f. To adopt, pursuant to the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary
22 to implement the provisions of this act;
- 23 g. To call to its assistance and avail itself of the services of the
24 employees of any State, county, or municipal department, board,
25 commission, or agency as may be required and made available for
26 these purposes;
- 27 h. To retain such staff as may be necessary in the career service
28 and to appoint an executive director thereof. The executive director
29 shall serve as a member of the senior executive or unclassified service
30 and may be appointed without regard to the provisions of Title 11A of
31 the New Jersey Statutes;
- 32 i. To review and analyze innovative techniques that may be
33 employed to maximize the total acreage reserved through the use of
34 perpetual easements;
- 35 j. To provide, through the State TDR Bank, a financial guarantee
36 with respect to any loan to be extended to any person that is secured
37 using development potential as collateral for the loan. Financial
38 guarantees provided under this act shall be in accordance with
39 procedures, terms and conditions, and requirements, including rights
40 and obligations of the parties in the event of default on any loan
41 secured in whole or in part using development potential as collateral,
42 to be established by rule or regulation adopted by the board pursuant
43 to the "Administrative Procedure Act";
- 44 k. To enter into agreement with the State Agriculture Development
45 Committee for the purpose of acquiring development potential through
46 the acquisition of development easements on farmland so that the

1 board may utilize the existing processes, procedures, and capabilities
2 of the State Agriculture Development Committee as necessary and
3 appropriate to accomplish the goals and objectives of the board as
4 provided for pursuant to this act;

5 1. To enter into agreements with other State agencies or entities
6 providing services and programs authorized by law so that the board
7 may utilize the existing processes, procedures, and capabilities of those
8 other agencies or entities as necessary and appropriate to accomplish
9 the goals and objectives of the board as provided for pursuant to this
10 act; [and]

11 m. To provide planning assistance grants to municipalities [that
12 have adopted viable development transfer ordinances, as determined
13 by the board,] for up to 50% of the cost of [planning associated with
14 such an ordinance] preparing, for development potential transfer
15 purposes, a utility service plan element or a development transfer plan
16 element of a master plan pursuant to section 19 of P.L.1975, c.291
17 (C.40:55D-28), a real estate market analysis required pursuant to
18 section 12 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), and a capital improvement program pursuant
20 to section 20 of P.L.1975, c.291 (C.40:55D-29) and incurred by a
21 municipality, or [\$10,000] \$40,000, whichever is less, which grants
22 shall be made utilizing moneys deposited into the bank pursuant to
23 section 8 of [this act] P.L.1993, c.339;

24 n. To provide funding in the form of grants or loans for the
25 purchase of development potential to development transfer banks
26 established by a municipality or county pursuant to P.L.1989, c.86
27 (C.40:55D-113 et seq.) or section 22 of P.L. , c. (C.)
28 (pending before the Legislature as this bill); and

29 o. To serve as a development transfer bank designated by the
30 governing body of a municipality or county pursuant to section 22 of
31 P.L. , c. (C.) (pending before the Legislature as this
32 bill).

33 (cf: P.L.1993, c.339, s.4)

34

35 31. Section 8 of P.L.1993, c.339 is amended to read as follows:

36 8. a. There is appropriated to the State Transfer of Development
37 Rights Bank from the "1989 Development Potential Transfer Bank
38 Fund" established pursuant to section 23 of P.L.1989, c.183, the sum
39 of \$20,000,000 for deposit into the State TDR Bank, which shall be
40 expended in accordance with the provisions of [this act] P.L.1993,
41 c.339 (C.4:1C-49 et al.)

42 b. Of the moneys appropriated pursuant to subsection a. of this
43 section, not more than \$400,000 may be expended in total for
44 administrative costs, staff assistance or professional services within the
45 period of four years from the effective date of [this act] P.L.1993,

1 c.339 (C.4:1C-49 et seq.) , and not more than ~~[\$400,000]~~ \$1,500,000
2 may be expended for the purposes of subsection m. of section 4 of
3 ~~[this act]~~ P.L.1993, c.339 (C.4:1C-52).
4 (cf: P.L.1993, c.339, s.8)

5
6 32. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to read
7 as follows:

8 3. For the purposes of this act, unless the context clearly indicates
9 a different meaning:

10 The term "shall" indicates a mandatory requirement, and the term
11 "may" indicates a permissive action.

12 "Administrative officer" means the clerk of the municipality, unless
13 a different municipal official or officials are designated by ordinance
14 or statute.

15 "Agricultural land" means "farmland" as defined pursuant to section
16 3 of P.L.1999, c.152 (C.13:8C-3).

17 "Applicant" means a developer submitting an application for
18 development.

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

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

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

31 "Building" means a combination of materials to form a construction
32 adapted to permanent, temporary, or continuous occupancy and having
33 a roof.

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

36 "Capital improvement" means a governmental acquisition of real
37 property or major construction project.

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

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

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

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

9 "Conventional" means development other than planned
10 development.

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

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

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

22 (cf: P.L.1991, c.412, s.1)

23

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

26 3.1. "Days" means calendar days.

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

29 "Developer" means the legal or beneficial owner or owners of a lot
30 or of any land proposed to be included in a proposed development,
31 including the holder of an option or contract to purchase, or other
32 person having an enforceable proprietary interest in such land.

33 "Development" means the division of a parcel of land into two or
34 more parcels, the construction, reconstruction, conversion, structural
35 alteration, relocation or enlargement of any building or other structure,
36 or of any mining excavation or landfill, and any use or change in the
37 use of any building or other structure, or land or extension of use of
38 land, for which permission may be required pursuant to this act.

39 "Development potential" means the maximum number of dwelling
40 units or square feet of nonresidential floor area that may be
41 constructed on a specified lot or in a specified zone under the master
42 plan and land use regulations in effect on the date of the adoption of
43 the development transfer ordinance, and in accordance with
44 recognized environmental constraints.

45 "Development regulation" means a zoning ordinance, subdivision
46 ordinance, site plan ordinance, official map ordinance or other

1 municipal regulation of the use and development of land, or
2 amendment thereto adopted and filed pursuant to this act.

3 "Development transfer" or "development potential transfer" means
4 the conveyance of development potential, or the permission for
5 development, from one or more lots to one or more other lots by deed,
6 easement, or other means as authorized by ordinance.

7 "Development transfer bank" means a development transfer bank
8 established pursuant to section 22 of P.L. , c. (C.) (pending
9 before the Legislature as this bill) or the State TDR Bank.

10 "Drainage" means the removal of surface water or groundwater
11 from land by drains, grading or other means and includes control of
12 runoff during and after construction or development to minimize
13 erosion and sedimentation, to assure the adequacy of existing and
14 proposed culverts and bridges, to induce water recharge into the
15 ground where practical, to lessen nonpoint pollution, to maintain the
16 integrity of stream channels for their biological functions as well as for
17 drainage, and the means necessary for water supply preservation or
18 prevention or alleviation of flooding.

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

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

23 "Final approval" means the official action of the planning board
24 taken on a preliminarily approved major subdivision or site plan, after
25 all conditions, engineering plans and other requirements have been
26 completed or fulfilled and the required improvements have been
27 installed or guarantees properly posted for their completion, or
28 approval conditioned upon the posting of such guarantees.

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

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

34 "Governing body" means the chief legislative body of the
35 municipality. In municipalities having a board of public works,
36 "governing body" means such board.

37 "Historic district" means one or more historic sites and intervening
38 or surrounding property significantly affecting or affected by the
39 quality and character of the historic site or sites.

40 "Historic site" means any real property, man-made structure,
41 natural object or configuration or any portion or group of the
42 foregoing of historical, archeological, cultural, scenic or architectural
43 significance.

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

46 "Interested party" means: (a) in a criminal or quasi-criminal

1 proceeding, any citizen of the State of New Jersey; and (b) in the case
2 of a civil proceeding in any court or in an administrative proceeding
3 before a municipal agency, any person, whether residing within or
4 without the municipality, whose right to use, acquire, or enjoy
5 property is or may be affected by any action taken under this act, or
6 whose rights to use, acquire, or enjoy property under this act, or under
7 any other law of this State or of the United States have been denied,
8 violated or infringed by an action or a failure to act under this act.

9 "Land" includes improvements and fixtures on, above or below the
10 surface.

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

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

22 (cf: P.L.1991, c.412, s.2)

23

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

26 3.2. "Maintenance guarantee" means any security which may be
27 accepted by a municipality for the maintenance of any improvements
28 required by this act, including but not limited to surety bonds, letters
29 of credit under the circumstances specified in section 16 of P.L.1991,
30 c.256 (C.40:55D-53.5), and cash.

31 "Major subdivision" means any subdivision not classified as a minor
32 subdivision.

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

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

41 "Minor site plan" means a development plan of one or more lots
42 which (1) proposes new development within the scope of development
43 specifically permitted by ordinance as a minor site plan; (2) does not
44 involve planned development, any new street or extension of any
45 off-tract improvement which is to be prorated pursuant to section 30
46 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information

1 reasonably required in order to make an informed determination as to
2 whether the requirements established by ordinance for approval of a
3 minor site plan have been met.

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

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

11 "Municipal agency" means a municipal planning board or board of
12 adjustment, or a governing body of a municipality when acting
13 pursuant to this act and any agency which is created by or responsible
14 to one or more municipalities when such agency is acting pursuant to
15 this act.

16 "Municipal resident" means a person who is domiciled in the
17 municipality.

18 "Nonconforming lot" means a lot, the area, dimension or location
19 of which was lawful prior to the adoption, revision or amendment of
20 a zoning ordinance, but fails to conform to the requirements of the
21 zoning district in which it is located by reason of such adoption,
22 revision or amendment.

23 "Nonconforming structure" means a structure the size, dimension
24 or location of which was lawful prior to the adoption, revision or
25 amendment of a zoning ordinance, but which fails to conform to the
26 requirements of the zoning district in which it is located by reasons of
27 such adoption, revision or amendment.

28 "Nonconforming use" means a use or activity which was lawful
29 prior to the adoption, revision or amendment of a zoning ordinance,
30 but which fails to conform to the requirements of the zoning district
31 in which it is located by reasons of such adoption, revision or
32 amendment.

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

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

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

40 "Offsite" means located outside the lot lines of the lot in question
41 but within the property, of which the lot is a part, which is the subject
42 of a development application or the closest half of the street or
43 right-of-way abutting the property of which the lot is a part.

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

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

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

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

13 (cf: P.L.1998, c.95, s.1)

14

15 35. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to
16 read as follows:

17 3.3. "Party immediately concerned" means for purposes of notice
18 any applicant for development, the owners of the subject property and
19 all owners of property and government agencies entitled to notice
20 under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

21 "Performance guarantee" means any security, which may be
22 accepted by a municipality, including but not limited to surety bonds,
23 letters of credit under the circumstances specified in section 16 of
24 P.L.1991, c.256 (C.40:55D-53.5), and cash.

25 "Planned commercial development" means an area of a minimum
26 contiguous or noncontiguous size as specified by ordinance to be
27 developed according to a plan as a single entity containing one or
28 more structures with appurtenant common areas to accommodate
29 commercial or office uses or both and any residential and other uses
30 incidental to the predominant use as may be permitted by ordinance.

31 "Planned development" means planned unit development, planned
32 unit residential development, residential cluster, planned commercial
33 development or planned industrial development.

34 "Planned industrial development" means an area of a minimum
35 contiguous or noncontiguous size as specified by ordinance to be
36 developed according to a plan as a single entity containing one or
37 more structures with appurtenant common areas to accommodate
38 industrial uses and any other uses incidental to the predominant use as
39 may be permitted by ordinance.

40 "Planned unit development" means an area with a specified
41 minimum contiguous or noncontiguous acreage of 10 acres or more to
42 be developed as a single entity according to a plan, containing one or
43 more residential clusters or planned unit residential developments and
44 one or more public, quasi-public, commercial or industrial areas in
45 such ranges of ratios of nonresidential uses to residential uses as shall
46 be specified in the zoning ordinance.

1 "Planned unit residential development" means an area with a
2 specified minimum contiguous or noncontiguous acreage of five acres
3 or more to be developed as a single entity according to a plan
4 containing one or more residential clusters, which may include
5 appropriate commercial, or public or quasi-public uses all primarily for
6 the benefit of the residential development.

7 "Planning board" means the municipal planning board established
8 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

9 "Plat" means a map or maps of a subdivision or site plan.

10 "Preliminary approval" means the conferral of certain rights
11 pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46;
12 C.40:55D-48; and C.40:55D-49) prior to final approval after specific
13 elements of a development plan have been agreed upon by the planning
14 board and the applicant.

15 "Preliminary floor plans and elevations" means architectural
16 drawings prepared during early and introductory stages of the design
17 of a project illustrating in a schematic form, its scope, scale and
18 relationship to its site and immediate environs.

19 "Public areas" means (1) public parks, playgrounds, trails, paths and
20 other recreational areas; (2) other public open spaces; (3) scenic and
21 historic sites; and (4) sites for schools and other public buildings and
22 structures.

23 "Public development proposal" means a master plan, capital
24 improvement program or other proposal for land development adopted
25 by the appropriate public body, or any amendment thereto.

26 "Public drainage way" means the land reserved or dedicated for the
27 installation of storm water sewers or drainage ditches, or required
28 along a natural stream or watercourse for preserving the biological as
29 well as drainage function of the channel and providing for the flow of
30 water to safeguard the public against flood damage, sedimentation and
31 erosion and to assure the adequacy of existing and proposed culverts
32 and bridges, to induce water recharge into the ground where practical,
33 and to lessen nonpoint pollution.

34 "Public open space" means an open space area conveyed or
35 otherwise dedicated to a municipality, municipal agency, board of
36 education, State or county agency, or other public body for
37 recreational or conservational uses.

38 "Public utility" means any public utility regulated by the Board of
39 Regulatory Commissioners and defined pursuant to R.S.48:2-13.

40 "Quorum" means the majority of the full authorized membership of
41 a municipal agency.

42 "Receiving zone" means an area or areas designated in a master
43 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
44 (C.40:55D-1 et seq.), within which development may be increased, and
45 which is otherwise consistent with the provisions of section 9 of
46 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
47 bill).

1 "Residential cluster" means a contiguous or noncontiguous area to
2 be developed as a single entity according to a plan containing
3 residential housing units which have a common or public open space
4 area as an appurtenance.

5 "Residential density" means the number of dwelling units per gross
6 acre of residential land area including streets, easements and open
7 space portions of a development.

8 "Resubdivision" means (1) the further division or relocation of lot
9 lines of any lot or lots within a subdivision previously made and
10 approved or recorded according to law or (2) the alteration of any
11 streets or the establishment of any new streets within any subdivision
12 previously made and approved or recorded according to law, but does
13 not include conveyances so as to combine existing lots by deed or
14 other instrument.

15 (cf: P.L.1995, c.364, s.1)

16
17 36. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to
18 read as follows:

19 3.4 "Sedimentation" means the deposition of soil that has been
20 transported from its site of origin by water, ice, wind, gravity or other
21 natural means as a product of erosion.

22 "Sending zone" means an area or areas designated in a master plan
23 and zoning ordinance, adopted pursuant to P.L.1975, c.291
24 (C.40:55D-1 et seq.), within which development may be restricted and
25 which is otherwise consistent with the provisions of section 8 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).

27 "Site plan" means a development plan of one or more lots on which
28 is shown (1) the existing and proposed conditions of the lot, including
29 but not necessarily limited to topography, vegetation, drainage, flood
30 plains, marshes and waterways, (2) the location of all existing and
31 proposed buildings, drives, parking spaces, walkways, means of
32 ingress and egress, drainage facilities, utility services, landscaping,
33 structures and signs, lighting, screening devices, and (3) any other
34 information that may be reasonably required in order to make an
35 informed determination pursuant to an ordinance requiring review and
36 approval of site plans by the planning board adopted pursuant to
37 article 6 of this act.

38 "Standards of performance" means standards (1) adopted by
39 ordinance pursuant to subsection 52d. regulating noise levels, glare,
40 earthborne or sonic vibrations, heat, electronic or atomic radiation,
41 noxious odors, toxic matters, explosive and inflammable matters,
42 smoke and airborne particles, waste discharge, screening of unsightly
43 objects or conditions and such other similar matters as may be
44 reasonably required by the municipality or (2) required by applicable
45 Federal or State laws or municipal ordinances.

46 "State Transfer of Development Rights Bank," or "State TDR

1 Bank," means the bank established pursuant to section 3 of P.L.1993,
2 c.339 (C.4:1C-51).

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

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

17 "Subdivision" means the division of a lot, tract or parcel of land
18 into two or more lots, tracts, parcels or other divisions of land for sale
19 or development. The following shall not be considered subdivisions
20 within the meaning of this act, if no new streets are created: (1)
21 divisions of land found by the planning board or subdivision committee
22 thereof appointed by the chairman to be for agricultural purposes
23 where all resulting parcels are 5 acres or larger in size, (2) divisions of
24 property by testamentary or intestate provisions, (3) divisions of
25 property upon court order, including but not limited to judgments of
26 foreclosure, (4) consolidation of existing lots by deed or other
27 recorded instrument and (5) the conveyance of one or more adjoining
28 lots, tracts or parcels of land, owned by the same person or persons
29 and all of which are found and certified by the administrative officer
30 to conform to the requirements of the municipal development
31 regulations and are shown and designated as separate lots, tracts or
32 parcels on the tax map or atlas of the municipality. The term
33 "subdivision" shall also include the term "resubdivision."

34 "Transcript" means a typed or printed verbatim record of the
35 proceedings or reproduction thereof.

36 "Variance" means permission to depart from the literal requirements
37 of a zoning ordinance pursuant to section 47 and subsection 29.2b.,
38 57c. and 57d. of this act.

39 "Zoning permit" means a document signed by the administrative
40 officer (1) which is required by ordinance as a condition precedent to
41 the commencement of a use or the erection, construction,
42 reconstruction, alteration, conversion or installation of a structure or
43 building and (2) which acknowledges that such use, structure or
44 building complies with the provisions of the municipal zoning
45 ordinance or variance therefrom duly authorized by a municipal agency
46 pursuant to sections 47 and 57 of this act.

47 (cf: P.L.1979, c.216, s.4)

1 37. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
2 read as follows:

3 19. Preparation; contents; modification.

4 a. The planning board may prepare and, after public hearing, adopt
5 or amend a master plan or component parts thereof, to guide the use
6 of lands within the municipality in a manner which protects public
7 health and safety and promotes the general welfare.

8 b. The master plan shall generally comprise a report or statement
9 and land use and development proposals, with maps, diagrams and
10 text, presenting, at least the following elements (1) and (2) and, where
11 appropriate, the following elements (3) through [(13)] (14) :

12 (1) A statement of objectives, principles, assumptions, policies and
13 standards upon which the constituent proposals for the physical,
14 economic and social development of the municipality are based;

15 (2) A land use plan element (a) taking into account and stating its
16 relationship to the statement provided for in paragraph (1) hereof, and
17 other master plan elements provided for in paragraphs (3) through
18 [(13)] (14) hereof and natural conditions, including, but not
19 necessarily limited to, topography, soil conditions, water supply,
20 drainage, flood plain areas, marshes, and woodlands; (b) showing the
21 existing and proposed location, extent and intensity of development of
22 land to be used in the future for varying types of residential,
23 commercial, industrial, agricultural, recreational, educational and other
24 public and private purposes or combination of purposes; and stating
25 the relationship thereof to the existing and any proposed zone plan and
26 zoning ordinance; and (c) showing the existing and proposed location
27 of any airports and the boundaries of any airport safety zones
28 delineated pursuant to the "Air Safety and Zoning Act of 1983,"
29 P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of
30 the standards of population density and development intensity
31 recommended for the municipality;

32 (3) A housing plan element pursuant to section 10 of P.L.1985,
33 c.222 (C.52:27D-310), including, but not limited to, residential
34 standards and proposals for the construction and improvement of
35 housing;

36 (4) A circulation plan element showing the location and types of
37 facilities for all modes of transportation required for the efficient
38 movement of people and goods into, about, and through the
39 municipality, taking into account the functional highway classification
40 system of the Federal Highway Administration and the types,
41 locations, conditions and availability of existing and proposed
42 transportation facilities, including air, water, road and rail;

43 (5) A utility service plan element analyzing the need for and
44 showing the future general location of water supply and distribution
45 facilities, drainage and flood control facilities, sewerage and waste
46 treatment, solid waste disposal and provision for other related utilities,

1 and including any storm water management plan required pursuant to
2 the provisions of P.L.1981, c.32 (C.40:55D-93 et seq.). If a
3 municipality prepares a utility service plan element as a condition for
4 adopting a development transfer ordinance pursuant to subsection c.
5 of section 4 of P.L. , c. (C.) (pending before the
6 Legislature as this bill), the plan element shall address the provision of
7 utilities in the receiving zone as provided thereunder;

8 (6) A community facilities plan element showing the existing and
9 proposed location and type of educational or cultural facilities, historic
10 sites, libraries, hospitals, firehouses, police stations and other related
11 facilities, including their relation to the surrounding areas;

12 (7) A recreation plan element showing a comprehensive system of
13 areas and public sites for recreation;

14 (8) A conservation plan element providing for the preservation,
15 conservation, and utilization of natural resources, including, to the
16 extent appropriate, energy, open space, water supply, forests, soil,
17 marshes, wetlands, harbors, rivers and other waters, fisheries,
18 endangered or threatened species wildlife and other resources, and
19 which systemically analyzes the impact of each other component and
20 element of the master plan on the present and future preservation,
21 conservation and utilization of those resources;

22 (9) An economic plan element considering all aspects of economic
23 development and sustained economic vitality, including (a) a
24 comparison of the types of employment expected to be provided by the
25 economic development to be promoted with the characteristics of the
26 labor pool resident in the municipality and nearby areas and (b) an
27 analysis of the stability and diversity of the economic development to
28 be promoted;

29 (10) A historic preservation plan element: (a) indicating the
30 location and significance of historic sites and historic districts; (b)
31 identifying the standards used to assess worthiness for historic site or
32 district identification; and (c) analyzing the impact of each component
33 and element of the master plan on the preservation of historic sites and
34 districts;

35 (11) Appendices or separate reports containing the technical
36 foundation for the master plan and its constituent elements;

37 (12) A recycling plan element which incorporates the State
38 Recycling Plan goals, including provisions for the collection,
39 disposition and recycling of recyclable materials designated in the
40 municipal recycling ordinance, and for the collection, disposition and
41 recycling of recyclable materials within any development proposal for
42 the construction of 50 or more units of single-family residential
43 housing or 25 or more units of multi-family residential housing and any
44 commercial or industrial development proposal for the utilization of
45 1,000 square feet or more of land; [and]

46 (13) A farmland preservation plan element, which shall include: an

1 inventory of farm properties and a map illustrating significant areas of
2 agricultural land; a statement showing that municipal ordinances
3 support and promote agriculture as a business; and a plan for
4 preserving as much farmland as possible in the short term by
5 leveraging monies made available by P.L.1999, c.152 (C.13:8C-1 et
6 al.) through a variety of mechanisms including, but not limited to,
7 utilizing option agreements, installment purchases, and encouraging
8 donations of permanent development easements ; and

9 (14) A development transfer plan element which sets forth the
10 public purposes, the locations of sending and receiving zones and the
11 technical details of a development transfer program based on the
12 provisions of section 5 of P.L. , c. (C.) (pending before the
13 Legislature as this bill).

14 c. The master plan and its plan elements may be divided into
15 subplans and subplan elements projected according to periods of time
16 or staging sequences.

17 d. The master plan shall include a specific policy statement
18 indicating the relationship of the proposed development of the
19 municipality, as developed in the master plan to (1) the master plans
20 of contiguous municipalities, (2) the master plan of the county in
21 which the municipality is located, (3) the State Development and
22 Redevelopment Plan adopted pursuant to the "State Planning Act,"
23 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
24 (4) the district solid waste management plan required pursuant to the
25 provisions of the "Solid Waste Management Act," P.L.1970, c.39
26 (C.13:1E-1 et seq.) of the county in which the municipality is located.
27 (cf: P.L.1999, c.180, s.2)

28

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

31 20. a. The governing body may authorize the planning board from
32 time to time to prepare a program of municipal capital improvement
33 projects projected over a term of at least 6 years, and amendments
34 thereto. Such program may encompass major projects being currently
35 undertaken or future projects to be undertaken, with Federal, State,
36 county and other public funds or under Federal, State or county
37 supervision. The first year of such program shall, upon adoption by
38 the governing body, constitute the capital budget of the municipality
39 as required by N.J.S.40A:4-43 et seq. The program shall classify
40 projects in regard to the urgency and need for realization, and shall
41 recommend a time sequence for their implementation. The program
42 may also contain the estimated cost of each project and indicate
43 probable operating and maintenance costs and probable revenues, if
44 any, as well as existing sources of funds or the need for additional
45 sources of funds for the implementation and operation of each project.
46 The program shall, as far as possible, be based on existing information

1 in the possession of the departments and agencies of the municipality
2 and shall take into account public facility needs indicated by the
3 prospective development shown in the master plan of the municipality
4 or as permitted by other municipal land use controls.

5 In preparing the program, the planning board shall confer, in a
6 manner deemed appropriate by the board, with the mayor, the chief
7 fiscal officer, other municipal officials and agencies, and the school
8 board or boards.

9 Any such program shall include an estimate of the displacement of
10 persons and establishments caused by each recommended project.

11 b. In addition to any of the requirements in subsection a. of this
12 section, whenever the planning board is authorized and directed to
13 prepare a capital improvements program, every municipal department,
14 authority or agency shall, upon request of the planning board, transmit
15 to said board a statement of all capital projects proposed to be
16 undertaken by such municipal department, authority or agency, during
17 the term of the program, for study, advice and recommendation by the
18 planning board.

19 c. In addition to all of the other requirements of this section, any
20 municipality that intends to provide for the transfer of development
21 within its jurisdiction pursuant to section 3 of P.L. _____, c. _____
22 (pending before the Legislature as this bill) shall include within its
23 capital improvement program provision for those capital projects to be
24 undertaken in the receiving zone or zones required as a condition for
25 adopting a development transfer ordinance pursuant to subsection b.
26 of section 4 of P.L. _____, c. _____ (C. _____) (pending before the
27 Legislature as this bill).

28 (cf: P.L.1975, c.291, s.20)

29

30 39. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to
31 read as follows:

32 52. A zoning ordinance may:

33 a. Limit and restrict buildings and structures to specified districts
34 and regulate buildings and structures according to their type and the
35 nature and extent of their use, and regulate the nature and extent of
36 the use of land for trade, industry, residence, open space or other
37 purposes.

38 b. Regulate the bulk, height, number of stories, orientation, and
39 size of buildings and the other structures; the percentage of lot or
40 development area that may be occupied by structures; lot sizes and
41 dimensions; and for these purposes may specify floor area ratios and
42 other ratios and regulatory techniques governing the intensity of land
43 use and the provision of adequate light and air, including, but not
44 limited to the potential for utilization of renewable energy sources.

45 c. Provide districts for planned developments; provided that an
46 ordinance providing for approval of subdivisions and site plans by the

1 planning board has been adopted and incorporates therein the
2 provisions for such planned developments in a manner consistent with
3 article 6 of [this act] P.L.1975, c.291 (C.40:55D-37 et seq.). The
4 zoning ordinance shall establish standards governing the type and
5 density, or intensity of land use, in a planned development. Said
6 standards shall take into account that the density, or intensity of land
7 use, otherwise allowable may not be appropriate for a planned
8 development. The standards may vary the type and density, or
9 intensity of land use, otherwise applicable to the land within a planned
10 development in consideration of the amount, location and proposed
11 use of open space; the location and physical characteristics of the site
12 of the proposed planned development; and the location, design and
13 type of dwelling units and other uses. Such standards may provide for
14 the clustering of development between noncontiguous parcels and
15 may, in order to encourage the flexibility of density, intensity of land
16 uses, design and type, authorize a deviation in various clusters from
17 the density, or intensity of use, established for an entire planned
18 development. The standards and criteria by which the design, bulk and
19 location of buildings are to be evaluated shall be set forth in the zoning
20 ordinance and all standards and criteria for any feature of a planned
21 development shall be set forth in such ordinance with sufficient
22 certainty to provide reasonable criteria by which specific proposals for
23 planned development can be evaluated.

24 d. Establish, for particular uses or classes of uses, reasonable
25 standards of performance and standards for the provision of adequate
26 physical improvements including, but not limited to, off-street parking
27 and loading areas, marginal access roads and roadways, other
28 circulation facilities and water, sewerage and drainage facilities;
29 provided that section 41 of [this act] P.L.1975, c.291 (C.40:55D-53)
30 shall apply to such improvements.

31 e. Designate and regulate areas subject to flooding (1) pursuant to
32 P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary
33 in the absence of appropriate flood hazard area designations pursuant
34 to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations
35 pursuant to P.L.1972, c.185 or minimum standards for local flood
36 fringe area regulation pursuant to P.L.1972, c.185.

37 f. Provide for conditional uses pursuant to section 54 of [this act]
38 P.L.1975, c.291 (C.40:55D-67).

39 g. Provide for senior citizen community housing.

40 h. Require as a condition for any approval which is required
41 pursuant to such ordinance and the provisions of this chapter, that no
42 taxes or assessments for local improvements are due or delinquent on
43 the property for which any application is made.

44 i. Provide for historic preservation pursuant to section 5 of
45 P.L.1991 c.199 (C.40:55D-65.1).

46 j. Provide for sending and receiving zones for a development

1 transfer program established pursuant to P.L. , c. (C.) (pending
2 before the Legislature as this bill).
3 (cf: P.L.1995, c.364, s.2)

4
5 40. This act shall take effect 180 days next following enactment,
6 except that section 12 shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill would establish a Statewide transfer of development rights
12 (TDR) program, similar to the current Burlington County pilot TDR
13 program. It is the Legislature's intention in enacting this legislation to
14 create a mechanism to accommodate growth and preserve open space
15 and agricultural lands in a manner that is fair and equitable for all
16 landowners.

17 A TDR program involves the consideration of how the
18 municipality's future growth, capacity and preservation needs are to be
19 directed into sending and receiving zones. Specifically, this
20 consideration is to be reflected in a series of planning documents
21 which a municipality is required to adopt in order to effectuate a TDR
22 program. These documents include a utility service plan element and
23 development transfer plan element of the master plan, a capital
24 improvement program, a real estate market analysis, and a
25 development transfer ordinance which effectuates the plans.

26 The bill is designed to grant municipalities the flexibility to adopt
27 a TDR program that meets their specific growth and preservation
28 needs, subject to county planning board approval, in order to assure
29 that regional planning needs are taken into consideration.

30 The specific provisions of the bill are summarized below.

31
32 **Requirements**

33
34 The bill establishes a series of conditions that a municipality is
35 required to fulfill in order to be eligible to adopt a TDR ordinance.
36 Prior to the adoption or amendment of any development transfer
37 ordinance, a municipality shall have adopted a utility service plan
38 element, development transfer plan element and capital improvement
39 program under the "Municipal Land Use Law," as amended by this bill.

40 Additionally, the municipality's initial petition for endorsement of
41 its master plan by the State Planning Commission shall have been
42 approved. Prior to the adoption of such an ordinance, the municipal
43 planning board shall have conducted a real estate market analysis
44 which examines the relationship between the development rights
45 anticipated to be generated in the sending zones and the capacity of
46 designated receiving zones to accommodate the necessary
47 development.

- 1 The municipality shall adopt a development transfer plan element
2 of the master plan that includes:
- 3 * an estimate of the anticipated population and economic growth
4 in the municipality for the succeeding 10 years;
 - 5 * the identification and description of all prospective sending and
6 receiving zones;
 - 7 * an analysis of how the anticipated population growth in the
8 municipality is to be accommodated within the municipality in
9 general, and the receiving zone or zones in particular;
 - 10 * an estimate of existing and proposed infrastructure of the
11 proposed receiving zone;
 - 12 * a procedure and method for issuing the instruments necessary
13 to convey the development potential from the sending zone to
14 the receiving zone; and
 - 15 * explicit planning objectives and design standards to govern the
16 review of applications for development in the receiving zone in
17 order to facilitate their review by the approving authority.

18 The absence of plan endorsement or the failure to have transferred
19 a sufficient degree of development potential within five years as
20 required pursuant to section 20 of the bill, shall constitute a rebuttable
21 presumption that the development transfer ordinance is no longer
22 reasonable.

23

24 **Sending and Receiving Zones**

25

26 The bill establishes the criteria governing which lands may be
27 included in sending zones, where development is to be restricted, and
28 receiving zones, where development is to be transferred.

29

30 **Sending Zone Requirements**

31

32 Sending zones shall be composed predominantly of land upon which
33 development is restricted or upon which development has been limited
34 because of the particular features of the land in question. The bill
35 provides examples, which include agricultural, woodland, floodplain,
36 wetlands, threatened or endangered species habitat, steeped sloped
37 land or other lands on which development activities are restricted by
38 federal, State or local laws or regulations, land substantially improved
39 or developed in a manner which presents a unique and distinctive
40 aesthetic, architectural or historical point of interest or other low
41 density improved or unimproved areas.

42

43 **Receiving Zone Requirements**

44

- 45 * The receiving zone shall be appropriate and suitable for
46 development and shall be at least sufficient to accommodate all
47 of the development potential of the sending zone.

1 * All infrastructure necessary to achieve the development
2 potential of the receiving zone shall either exist or be scheduled
3 to be provided.

4 * Any development to be undertaken in a receiving zone utilizing
5 density increases shall require the use of appropriate
6 instruments of transfer.

7

8 **Review of TDR Ordinance**

9

10 A TDR ordinance shall first go through a review by the county
11 planning board for an evaluation of:

12 * consistency with the county master plan;

13 * support of regional objectives for agricultural preservation,
14 natural resource management and protection, historic or
15 architectural conservation;

16 * consistency with reasonable population and economic forecasts
17 for the county; and

18 * sufficiency of the receiving zone to accommodate the
19 development potential that may be transferred from sending
20 zones and a reasonable assurance of marketability of any
21 instruments of transfer that may be created.

22 If the county does not recommend enactment and cannot resolve its
23 issues with the municipality, the municipality may petition the Office
24 of Smart Growth for a final determination.

25

26 **TDR Bank**

27

28 The bill authorizes a municipality or county to establish a TDR bank
29 for the purpose of facilitating the buying and selling of development
30 credits. Alternatively, a municipality or county may opt to use the
31 State TDR Bank for these purposes. The bank may purchase credits
32 from sending areas and apply for funds to purchase those credits. The
33 actions of the bank may not impair the private sale or transfer of
34 development potential.

35

36 **Existing Burlington County Program**

37

38 The bill grandfathers the existing Burlington County TDR Program
39 and authorizes Burlington County municipalities going forward to
40 either continue to utilize the existing pilot program or the Statewide
41 program being created by this bill. Additionally, Burlington County
42 municipalities may continue to utilize the Burlington County TDR
43 bank, the State TDR bank, or establish their own individual TDR
44 banks as provided in this bill.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1287

STATE OF NEW JERSEY

DATED: MARCH 8, 2004

The Senate Economic Growth Committee reports favorably Senate Bill No. 1287.

This bill would establish a Statewide transfer of development rights (TDR) program, similar to the current Burlington County pilot TDR program.

A TDR program involves the consideration of how the municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones. Specifically, this consideration is to be reflected in a series of planning documents which a municipality is required to adopt in order to effectuate a TDR program. These documents include a utility service plan element and development transfer plan element of the master plan, a capital improvement program, a real estate market analysis, and a development transfer ordinance ("TDR ordinance") which effectuates the plans.

The bill is designed to grant municipalities the flexibility to adopt a TDR program that meets their specific growth and preservation needs, subject to county planning board approval, in order to assure that regional planning needs are taken into consideration.

The specific provisions of the bill are summarized below.

Requirements

The bill establishes a series of conditions that a municipality is required to fulfill in order to be eligible to adopt a TDR ordinance. Prior to the adoption or amendment of any TDR ordinance, a municipality shall have adopted a utility service plan element, development transfer plan element and capital improvement program under the "Municipal Land Use Law," as amended by this bill. In addition, the municipality's initial petition for endorsement of its master plan by the State Planning Commission shall have been approved.

Prior to the adoption of a TDR ordinance, the municipal planning board shall have conducted a real estate market analysis which examines the relationship between the development rights anticipated to be generated in the sending zones and the capacity of designated receiving zones to accommodate the necessary development.

The municipality shall adopt a development transfer plan element of the master plan that includes:

- * an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;
- * the identification and description of all prospective sending and receiving zones;
- * an analysis of how the anticipated population growth in the municipality is to be accommodated within the municipality in general, and the receiving zone or zones in particular;
- * an estimate of existing and proposed infrastructure of the proposed receiving zone;
- * a procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone; and
- * explicit planning objectives and design standards to govern the review of applications for development in the receiving zone in order to facilitate their review by the approving authority.

The absence of plan endorsement or the failure to have transferred a sufficient degree of development potential within five years as required pursuant to section 20 of the bill shall constitute a rebuttable presumption that the TDR ordinance is no longer reasonable.

Sending and Receiving Zones

The bill establishes the criteria governing which lands may be included in sending zones, where development is to be restricted, and receiving zones, where development is to be transferred.

Sending zones shall be composed predominantly of land upon which development is restricted or upon which development has been limited because of the particular features of the land in question. The bill provides examples, which include agricultural land, woodland, floodplain, wetlands, threatened or endangered species habitat, steeply sloped land or other lands on which development activities are restricted by federal, State or local laws or regulations, land substantially improved or developed in a manner which presents a unique and distinctive aesthetic, architectural or historical point of interest, or other low density improved or unimproved areas.

Receiving zones shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential of the sending zone. All infrastructure necessary to achieve the development potential of the receiving zone shall either exist or be scheduled to be provided. Further, any development to be undertaken in a receiving zone utilizing density increases shall require the use of appropriate instruments of transfer.

Review of TDR Ordinance

A TDR ordinance shall first go through a review by the county planning board for an evaluation of:

- * consistency with the county master plan;
- * support of regional objectives for agricultural preservation, natural resource management and protection, historic or architectural conservation;
- * consistency with reasonable population and economic forecasts for the county; and
- * sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

If the county does not recommend enactment and cannot resolve its issues with the municipality, the municipality may petition the Office of Smart Growth for a final determination.

TDR Bank

The bill authorizes a municipality or county to establish a TDR bank for the purpose of facilitating the buying and selling of development credits. Alternatively, a municipality or county may opt to use the existing State TDR Bank for these purposes. The bank may purchase credits from sending areas and apply for funds to purchase those credits. The actions of the bank may not impair the private sale or transfer of development potential.

In addition, the bill amends the current authority of the State TDR Bank to provide for the issue of planning assistance grants to municipalities for up to 50% of the cost incurred by a municipality in preparing the utility service plan element, development transfer plan element, real estate market analysis, and capital improvement program, or \$40,000, whichever is less. The bill provides that not more than \$1.5 million from the "1989 Development Potential Transfer Bank Fund" may be used for these grants.

Existing Burlington County Program

The bill grandfathers the existing Burlington County TDR Program and authorizes Burlington County municipalities going forward to either continue to utilize the existing pilot program or the Statewide program being created by this bill. The bill further provides that Burlington County municipalities may continue to utilize the Burlington County TDR bank, use the State TDR bank, or establish their own individual TDR banks as provided in this bill.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1287
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: APRIL 7, 2004

SUMMARY

- Synopsis:** Extends authority for municipalities to establish transfer of development rights programs and sets forth parameters for creation thereof.
- Type of Impact:** Reallocates funding from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank. Potential increase in property tax revenue in those municipalities with designated receiving zones. Potential start up and future costs to local governments associated with operating a transfer development bank.
- Agencies Affected:** Office of Smart Growth in DCA; Pinelands Commission; County Agriculture Development Boards; Counties; Municipalities; State Transfer of Development Rights Bank.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Reallocates \$20 million from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank.		
State Cost	Not more than \$400,000 for administrative costs and no more than \$1.5 million for planning assistance grants to municipalities. Increased State TDR Bank costs for loans and development potential credit purchases.		
Local Cost	Potential start up and future costs to local governments associated with operating a TDR bank.		
Local Revenue	Potential increase in property tax revenue in those municipalities with designated receiving zones.		

- * This bill would establish a Statewide transfer of development rights (TDR) program that involves the consideration of how the municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones.
- * The bill establishes the criteria governing which lands may be included in sending zones, where development is to be restricted, and receiving zones, where development is to be transferred.
- * The bill authorizes a municipality or county to establish a TDR bank for the purpose of facilitating the buying and selling of development credits or permits those local units to use the existing State TDR Bank for these purposes.

- * The bill also provides for the issue of planning assistance grants to municipalities for up to 50 percent of the cost incurred by a municipality in preparing the utility service plan element, development transfer plan element, real estate market analysis, and capital improvement program, or \$40,000, whichever is less.
- * The bill provides that not more than \$1.5 million from the \$20 million transferred from the "1989 Development Potential Transfer Bank Fund" to the State Transfer of Development Rights Bank be used for planning assistance grants.

BILL DESCRIPTION

Senate Bill No. 1287 of 2004 would establish a Statewide transfer of development rights (TDR) program that involves the consideration of how a municipality's future growth, capacity and preservation needs are to be directed into sending and receiving zones. Specifically, this consideration is to be reflected in a series of planning documents which a municipality is required to adopt in order to effectuate a TDR program. These documents include a utility service plan element and development transfer plan element of the master plan, a capital improvement program, a real estate market analysis, and a development transfer ordinance ("TDR ordinance") which effectuates the plans.

The bill provides municipalities with the flexibility to adopt a TDR program that meets their specific growth and preservation needs, subject to county planning board approval, in order to assure that regional planning needs are taken into consideration.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) notes that this bill reallocates \$20 million from the Development Potential Transfer Bank Fund to the State Transfer of Development Rights Bank established pursuant to P.L.1993, c.339 (C.4:1C-49 et seq.), for the purpose of providing planning assistance grants to municipalities and loans or grants for the purchase of development potential to development transfer banks established by a municipality or county pursuant to this bill or P.L.1989, c.86 (C.40:55D-113 et seq.). Of the amount transferred no more than \$400,000 may be used for administrative costs and no more than \$1.5 million may be used to fund planning assistance grants to municipalities.

OLS notes that a county or municipality that establishes a development transfer bank will incur certain start up and continuing costs to enable the bank to purchase, sell, or exchange the development potential that is available for transfer from a sending zone. The costs associated with the establishment and maintenance of a development transfer bank will vary depending on the local government's development transfer ordinance. A county or municipality that has established a development transfer bank may apply for funds for the purchase of development potential under the provisions of the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c. 152 (C.13:8C-1 et seq.). It may also apply for funding from the State

S1287

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Transfer of Development Rights Bank for either planning or development potential purchasing funds.

Section: *Local Government*

Analyst: *Pedro Carrasquillo*
Assistant Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

Office of the Governor

News Releases

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Governor Signs Historic Law Allowing Towns to Steer Growth Away from Open Space

(TRENTON)--Governor James E. McGreevey signed legislation today that allows municipalities across New Jersey to target growth to designated areas using Transfer of Development Rights (TDR). TDR allows towns to accommodate growth while preserving open space and farmland in a manner that is fair and equitable for all landowners.

“Today is a good day for New Jersey’s future. I am pleased to sign the nation’s first bill that allows towns to steer development away from open space to areas specifically targeted for growth,” said McGreevey. “New Jersey is the most densely populated state in the nation and we are losing 50 acres of farmland each day. TDR is the planning tool we need to accommodate our growing population without using up all of our open space.”

Transfer of Development Rights allows a town to transfer the development potential in an environmentally sensitive area where growth is restricted, to a separate receiving area where roads, utilities and other infrastructure already exists and is appropriate for growth. Through this process, farmland and open space is preserved and growth is targeted to areas where it makes sense.

“By signing this bill into law, Governor McGreevey has once again made New Jersey the nation’s leader in smart growth and establishes an environmental legacy for the future of our State,” said Susan Bass Levin, Commissioner of the Department of Community Affairs. “This creative approach to planning and preservation allows us to use our finite resources more effectively and efficiently.”

Through a TDR program, developers purchase development rights to build in a “receiving area” – or area that is targeted for growth, and those funds are used to permanently preserve land in the sending area – the open space or farmland - at no cost to the taxpayer. The result is that municipalities have more control over where growth occurs; landowners are compensated fairly for their land; developers have a clear picture of where they can build; and fewer public funds are spent on land acquisition.

"This bill represents a huge victory in Governor McGreevey's war on sprawl and commitment to smart growth," said DEP Commissioner Bradley M. Campbell. "Empowering municipalities to steer development away from our most precious natural resources, like our drinking water supplies and remaining forested lands, means we're securing a better future for generations to come."

"This legislation enables municipalities across the state to steer development away from agricultural lands into more appropriate areas," said Agriculture Secretary Charles M. Kuperus. "Through well-crafted TDR ordinances, New Jersey can further its leadership role in farmland preservation by preserving even more land, as well as foster more livable communities."

The law allows municipalities the flexibility to adopt a TDR program that meets their specific growth and preservation needs, subject to county planning board approval, in order to assure that regional planning needs are taken into consideration.

"This historic occasion is the culmination of work over the past year by a broad-based coalition of state agencies, local governments, agriculture groups, environmentalists and planners, as well as the Legislature, to put together a consensus proposal that will work for New Jersey," continued McGreevey, "I commend them all for their hard work."

The TDR concept is modeled after a current 10-year pilot program in Burlington County, but other examples exist throughout the State, including in the Pinelands where the Pinelands Commission has been transferring Pinelands Development Credits into growth areas since 1981.

"Municipal officials would be able to designate which land will be protected, and which will be developed through TDR participation," said Senator John Adler. "This bill would give control of development and sprawl to municipalities that adopt TDR programs, and would provide valuable open space protections without hindering economic development in a region."

"Before now, towns have had almost no recourse against developers who want to build on every plot of open land," said Assemblyman Jerry Green. "TDRs strike the right balance, allowing for the preservation of open space while still enabling new housing construction and other development."

"Acres upon acres of open space are lost every day in New Jersey to runaway growth," said Assemblyman Reed Gusciora. "TDRs will better enable us to live up to our obligation to protect our natural resources."

"New Jersey now has a new tool in its battle against overdevelopment," said Assemblywoman Linda Greenstein. "Municipalities will be able to use this tool to redirect growth away from precious open space."

The Governor has made stopping sprawl and overdevelopment one of his top priorities.

The Governor has met his goal of preserving 20,000 acres of farmland a year—the largest amount ever to be preserved in one year. Since taking office, he has preserved 450 farms covering 35,554 acres throughout the state. In addition, he has preserved over 51,000 acres of open space, including 17,000 acres in the environmentally sensitive Highlands region.

In addition, he has placed unprecedented protections on New Jersey's drinking waters. He has applied the most comprehensive water protections in the nation to more than 6,000 miles of waterways, and has designated more than 40% of the State's drinking water as Category One protection—the highest protection possible.

State of New Jersey Governor's Office

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