

40:55D-53.2

**LEGISLATIVE HISTORY CHECKLIST**  
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(Municipal land use--professional fees)

**NJSA:** 40:55D-53.2

**LAWS OF:** 1995 **CHAPTER:** 54

**BILL NO:** A518

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

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:** **ASSEMBLY:** Housing  
**SENATE:** Community Affairs

**AMENDED DURING PASSAGE:** Yes Amendments during passage denoted by  
Second reprint enacted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** September 12, 1994  
**SENATE:** March 2, 1995

**DATE OF APPROVAL:** March 17, 1995

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBP:pp

[SECOND REPRINT]

ASSEMBLY, No. 518

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen ZECKER, ROBERTS, Catania and  
Assemblywoman Haines

1 AN ACT concerning certain fees required under the "Municipal  
2 Land Use Law," amending P.L.1991, c.256 <sup>2</sup>and P.L.1975,  
3 c.217,<sup>2</sup> and supplementing P.L.1993, c.32 (C.40:55D-40.1 et  
4 seq.).

5

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

8 1. Section 13 of P.L.1991, c.256 (C.40:55D-53.2) is amended to  
9 read as follows:

10 13. a. The <sup>2</sup>chief financial officer of a<sup>2</sup> municipality <sup>2</sup>[or  
11 approving authority]<sup>2</sup> shall make all of the payments to  
12 professionals for services rendered to the municipality or  
13 approving authority for review of applications for development,  
14 review and preparation of documents, inspection of improvements  
15 or other purposes under the provisions of P.L.1975, c.291  
16 (C.40:55D-1 et seq.). Such fees or charges shall be based upon a  
17 schedule established by <sup>2</sup>[ordinance] resolution<sup>2</sup>. The application  
18 review and inspection charges shall be limited only to  
19 professional charges for review of applications, review and  
20 preparation of documents and inspections of developments under  
21 construction and [to] review by outside consultants when an  
22 application is of a nature beyond the scope of the expertise of the  
23 professionals normally utilized by the municipality. The only  
24 costs that shall be added to any such charges shall be actual  
25 out-of-pocket expenses of any such professionals or consultants  
26 including normal and typical expenses incurred in processing  
27 applications and inspecting improvements. The municipality or  
28 approving authority shall not bill the applicant, or charge any  
29 escrow account or deposit authorized under subsection b. of this  
30 section, for any municipal clerical or administrative functions,  
31 overhead expenses, meeting room charges, or any other municipal  
32 costs and expenses except as provided for in this section, nor  
33 shall a municipal professional add any such charges to his bill. If  
34 the salary, staff support and overhead for a municipal  
35 professional are provided by the municipality, the charge shall  
36 not exceed 200% of the sum of the products resulting from  
37 multiplying (1) the hourly base salary, which shall be established  
38 annually by ordinance, of each of the professionals by (2) the  
39 number of hours spent by the respective professional upon review  
40 of the application for development or inspection of the  
41 developer's improvements, as the case may be. For other  
42 professionals the charge shall be at the same rate as all other

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AHO committee amendments adopted March 7, 1994.

<sup>2</sup> Senate SCO committee amendments adopted February 6, 1995.

1 work of the same nature by the professional for the municipality  
2 when fees are not reimbursed or otherwise imposed on applicants  
3 or developers.

4 b. If the municipality requires of the developer a deposit  
5 toward anticipated municipal expenses for these professional  
6 services, the deposit shall be placed in an escrow account  
7 pursuant to section 1 of P.L.1985, c.315 (C.40:55D-53.1). The  
8 amount of the deposit required shall be reasonable in regard to  
9 the scale and complexity of the development. The amount of the  
10 <sup>2</sup>initial<sup>2</sup> deposit required shall be established by ordinance. For  
11 review of applications for development proposing a subdivision,  
12 the amount of the deposit shall be calculated based on the  
13 number of proposed lots. For review of applications for  
14 development proposing a site plan, the amount of the deposit  
15 shall be based on one or more of the following: the area of the  
16 site to be developed, the square footage of buildings to be  
17 constructed, or an additional factor for circulation-intensive  
18 sites, such as those containing drive-through facilities. Deposits  
19 for inspection fees shall be established in accordance with  
20 subsection h. of section 41 of P.L.1975, c.291 (C.40:55D-53).

21 c. <sup>2</sup>[All payments] Each payment<sup>2</sup> charged to the deposit for  
22 review of applications, review and preparation of documents and  
23 inspection of improvements shall be pursuant to [vouchers] a  
24 voucher from the <sup>2</sup>[professionals] professional<sup>2</sup> [stating], which  
25 voucher shall identify the personnel performing the service, and  
26 for each date the services performed, the hours spent <sup>2</sup>to  
27 one-quarter hour increments<sup>2</sup>, the hourly rate and the expenses  
28 incurred. All professionals shall submit vouchers to the <sup>2</sup>chief  
29 financial officer of the<sup>2</sup> municipality <sup>2</sup>[or to the approving  
30 authority]<sup>2</sup> on a monthly basis <sup>2</sup>in accordance with schedules and  
31 procedures established by the chief financial officer of the  
32 municipality<sup>2</sup>. If the services are provided by a municipal  
33 employee, the municipal employee shall prepare and submit to  
34 the <sup>2</sup>chief financial officer of the<sup>2</sup> municipality <sup>2</sup>[or to the  
35 approving authority]<sup>2</sup> a statement containing the same  
36 information as required on a voucher, on a monthly basis. The  
37 professional shall send an informational copy of all vouchers or  
38 statements submitted to the <sup>2</sup>chief financial officer of the<sup>2</sup>  
39 municipality <sup>2</sup>[or approving authority]<sup>2</sup> simultaneously to the  
40 applicant. The <sup>2</sup>chief financial officer of the<sup>2</sup> municipality <sup>2</sup>[or  
41 approving authority]<sup>2</sup> shall prepare and send to the applicant  
42 <sup>2</sup>[quarterly statements of activity against the deposit or the  
43 escrow account, which shall consist of an itemization of the  
44 vouchers submitted by the professionals and the balance in the  
45 escrow account] a statement which shall include an accounting of  
46 funds listing all deposits, interest earnings, disbursements, and  
47 the cumulative balance of the escrow account. This information  
48 shall be provided on a quarterly basis, if monthly charges are  
49 \$1,000 or less, or on a monthly basis if monthly charges exceed  
50 \$1,000<sup>2</sup>. If an escrow account or deposit contains insufficient  
51 funds to enable the municipality or approving authority to  
52 perform required application reviews or improvement inspections,  
53 the <sup>2</sup>chief financial officer of the<sup>2</sup> municipality <sup>2</sup>[or approving  
54 authority]<sup>2</sup> shall provide the applicant with a notice of the

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

8 d. The following close-out procedure shall apply to all deposits  
9 and escrow accounts established under the provisions of P.L.1975,  
10 c.291 (C.40:55D-1 et seq.) and shall commence after the  
11 approving authority has granted final approval and signed the  
12 subdivision <sup>2</sup>[plot] plat<sup>2</sup> or site plan, in the case of application  
13 review escrows and deposits, or after the improvements have  
14 been approved as provided in section 41 of P.L.1975, c.291  
15 (C.40:55D-53), in the case of improvement inspection escrows  
16 and deposits. The applicant shall send written notice by certified  
17 mail to the <sup>2</sup>chief financial officer of the<sup>2</sup> municipality <sup>2</sup>[or] and  
18 the<sup>2</sup> approving authority, and to the relevant municipal  
19 professional, that the application or the improvements, as the  
20 case may be, are completed. After receipt of such notice, the  
21 professional shall render a final bill to the <sup>2</sup>chief financial officer  
22 of the<sup>2</sup> municipality <sup>2</sup>[or approving authority]<sup>2</sup> within 30 days,  
23 and shall send a copy simultaneously to the applicant. The <sup>2</sup>chief  
24 financial officer of the<sup>2</sup> municipality <sup>2</sup>[or approving authority]<sup>2</sup>  
25 shall render a written final accounting to the [developer]  
26 applicant on the uses to which the deposit was put within <sup>2</sup>[30]  
27 45<sup>2</sup> days of receipt of the final bill. [Thereafter the municipality  
28 shall, upon written request, provide copies of the vouchers to the  
29 developer. If the salary, staff support and overhead for a  
30 professional are provided by the municipality, the charge to the  
31 deposit shall not exceed 200% of the sum of the products  
32 resulting from multiplying (1) the hourly base salary of each of  
33 the professionals by (2) the number of hours spent by the  
34 respective professional on review of the application for  
35 development or the developer's improvements, as the case may  
36 be. For other professionals the charge to the deposit shall be at  
37 the same rate as all other work of the same nature by the  
38 professional for the municipality.] Any balances remaining in the  
39 deposit or escrow account, including interest in accordance with  
40 section 1 of P.L.1985, c.315 (C.40:55D-53.1), shall be refunded to  
41 the developer along with the final accounting.

42 e. All professional charges for review of an application for  
43 development, review and preparation of documents or inspection  
44 of improvements shall be reasonable and necessary, given the  
45 status and progress of the application or construction. Review  
46 fees shall be charged only in connection with an application for  
47 development presently pending before the approving authority or  
48 upon review of compliance with conditions of approval, or review  
49 of requests for modification or amendment made by the  
50 applicant. A professional shall not review items which are  
51 subject to approval by any State governmental agency and not  
52 under municipal jurisdiction except to the extent consultation  
53 with a State agency is necessary due to the effect of State  
54 approvals in the subdivision or site plan. Inspection fees

1 shall be charged only for actual work shown on a subdivision or  
2 site plan or required by an approving resolution. Professionals  
3 inspecting improvements under construction shall charge only for  
4 inspections that are reasonably necessary to check the progress  
5 and quality of the work and such inspections shall be reasonably  
6 based on the <sup>1</sup>[following construction events or events related  
7 thereto: installation of silt fencing; construction of detention  
8 basins; construction of underdrains; rough grading of site; boxing  
9 out of road cartway; construction of sanitary sewers and  
10 manholes; construction of storm sewers and inlets; construction  
11 of water mains, hydrants, pumping stations, wells, water pits or  
12 any other facilities associated with water and sewer works;  
13 construction of cartway sub-base course; construction of cartway  
14 curbing; construction of cartway base course; proof-rolling of  
15 roadway subbase for base repairs; fine grading of site;  
16 construction of sidewalks and drives; installation of top soil on  
17 site; seeding or sodding of site; installation of landscape material;  
18 installation of fences, signs and traffic control devices;  
19 installation of street lights or on-site illumination; installation of  
20 trash holding and disposal areas; construction of off-site  
21 facilities required by the approving agency; setting of survey  
22 monuments; and construction of cartway top course] approved  
23 development plans and documents.<sup>1</sup>

24 f. If the municipality retains a different professional or  
25 consultant in the place of the professional originally responsible  
26 for development, application review, or inspection of  
27 improvements, the municipality or approving authority shall be  
28 responsible for all time and expenses of the new professional to  
29 become familiar with the application or the project, and the  
30 municipality or approving authority shall not bill the applicant or  
31 charge the deposit or the escrow account for any such services.  
32 (cf: P.L.1991, c.256, s.13)

33 2. Section 15 of P.L.1991, c.256 (C.40:55D-53.4) is amended to  
34 read as follows:

35 15. The cost of the installation of improvements for the  
36 purposes of section 41 of P.L.1975, c.291 (C.40:55D-53) shall be  
37 estimated by the municipal engineer based on documented  
38 construction costs for public improvements prevailing in the  
39 general area of the municipality. The developer may appeal the  
40 municipal engineer's estimate to the [governing body. The  
41 governing body shall decide the appeal within 45 days of receipt  
42 of the appeal in writing by the municipal clerk. After the  
43 developer posts a guarantee with the municipality based on the  
44 cost of the installation of improvements as determined by the  
45 governing body, he may institute legal action within one year of  
46 the posting in order to preserve the right to a judicial  
47 determination as to the fairness and reasonableness of the  
48 amount of the guarantee] <sup>2</sup>[technical subcommittee of the Site  
49 Improvement Advisory Board established under sections 3 and 4  
50 of P.L.1993, c.32 (C.40:55D-40.1 et seq.)] county construction  
51 board of appeals established under section 9 of P.L.1975, c.217  
52 (C.52:27D-127)<sup>2</sup>.

53 (cf: P.L.1991, c.256, s.15)

1 3. (New section) a. An applicant shall notify in writing the  
2 governing body <sup>2</sup>with copies to the chief financial officer, the  
3 approving authority<sup>2</sup> <sup>1</sup>and the professional<sup>1</sup> whenever <sup>2</sup>[he] the  
4 applicant<sup>2</sup> disputes the charges made by a professional for  
5 service rendered to the municipality in reviewing applications for  
6 development, review and preparation of documents, inspection of  
7 improvements, or other charges made pursuant to <sup>2</sup>[section 13 of  
8 P.L.1991, c.256 (C.40:55D-53.2)] the provisions of P.L.1975, c.291  
9 (C.40:55D-1 et seq.)<sup>2</sup>. The governing body <sup>2</sup>, or its designee,<sup>2</sup>  
10 shall within a reasonable time period attempt to remediate any  
11 disputed charges. If the matter is not resolved to the satisfaction  
12 of the applicant, the applicant may appeal to the <sup>2</sup>[technical  
13 subcommittee of the Site Improvement Advisory Board  
14 established under sections 3 and 4 of P.L.1993, c.32  
15 (C.40:55D-40.1 et seq.)] county construction board of appeals  
16 established under section 9 of P.L.1975, c.217 (C.52:27D-127)<sup>2</sup>  
17 any charge to an escrow account or a deposit by any municipal  
18 professional or consultant, or the cost of the installation of  
19 improvements estimated by the municipal engineer pursuant to  
20 section 15 of P.L.1991, c.256 (C.40:55D-53.4). An applicant or  
21 his authorized agent shall submit the appeal in writing to the  
22 <sup>2</sup>[Commissioner of Community Affairs, who shall direct the  
23 appeal to the technical subcommittee of the Site Improvement  
24 Advisory Board] county construction board of appeals<sup>2</sup>. The  
25 applicant or his authorized agent shall simultaneously send a copy  
26 of the appeal to the municipality, approving authority, and any  
27 professional whose charge is the subject of the appeal. An  
28 applicant shall file an appeal within 45 days from receipt of the  
29 informational copy of the professional's voucher required by  
30 subsection c. of section 13 of P.L.1991, c.256 (C.40:55D-53.2),  
31 except that if the professional has not supplied the applicant with  
32 an informational copy of the voucher, then the applicant shall file  
33 his appeal within 60 days from receipt of the <sup>2</sup>[quarterly]  
34 municipal<sup>2</sup> statement of activity against the deposit <sup>2</sup>[on] or<sup>2</sup>  
35 escrow account required by subsection c. of section 13 of  
36 P.L.1991, c.256 (C.40:55D-53.2). An applicant may file an appeal  
37 for an ongoing series of charges by a professional during a period  
38 not exceeding six months to demonstrate that they represent a  
39 pattern of excessive or inaccurate charges. An applicant making  
40 use of this provision need not appeal each charge individually.

41 b. The <sup>2</sup>[technical subcommittee shall meet bi-monthly if  
42 appeals have been filed and are pending before the  
43 subcommittee. The subcommittee] county construction board of  
44 appeals<sup>2</sup> shall hear the appeal, render a decision thereon, and file  
45 its decision with a statement of the reasons therefor with the  
46 municipality or approving authority not later than 10 business  
47 days following the submission of the appeal, unless such period of  
48 time has been extended with the consent of the applicant. The  
49 decision may approve, disapprove, or modify the professional  
50 charges appealed from. A copy of the decision shall be forwarded  
51 by certified or registered mail to the party making the appeal,  
52 the municipality, the approving authority, and the professional  
53 involved in the appeal. Failure by the board to hear an appeal  
54 and render and file a decision thereon within the time limits

1 prescribed in this subsection shall be deemed a denial of the  
2 appeal for purposes of a complaint, application, or appeal to a  
3 court of competent jurisdiction.

4 c. The <sup>2</sup>[technical subcommittee of the Site Improvement  
5 Advisory Board] county construction board of appeals<sup>2</sup> shall  
6 provide rules for its procedure in accordance with this section  
7 <sup>2</sup>[and regulations established by the commissioner]<sup>2</sup>. The board  
8 shall have the power to administer oaths and issue subpoenas to  
9 compel the attendance of witnesses and the production of  
10 relevant evidence, and the provisions of the "County and  
11 Municipal Investigations Law," P.L.1953, c.38 (C.2A:6AA-1 et  
12 seq.) shall apply.

13 d. During the pendency of any appeal, the municipality or  
14 approving authority shall continue to process, hear, and decide  
15 the application for development, and to inspect the development  
16 in the normal course, and shall not withhold, delay, or deny  
17 reviews, inspections, signing of subdivision plats or site plans,  
18 the <sup>2</sup>reduction or the <sup>2</sup> release of performance or maintenance  
19 guarantees, the issuance of construction permits or certificates  
20 of occupancy, or any other approval or permit because an appeal  
21 has been filed or is pending under this subsection. The <sup>2</sup>chief  
22 financial officer of the<sup>2</sup> municipality <sup>2</sup>[or approving authority]<sup>2</sup>  
23 may pay charges out of the appropriate escrow account or deposit  
24 for which an appeal has been filed. If a charge is disallowed after  
25 payment <sup>2</sup>[by the municipality or approving authority]<sup>2</sup>, the  
26 <sup>2</sup>chief financial officer of the<sup>2</sup> municipality <sup>2</sup>[or approving  
27 authority]<sup>2</sup> shall <sup>2</sup>[give the applicant a credit against] reimburse<sup>2</sup>  
28 the <sup>2</sup>deposit or<sup>2</sup> escrow account in the amount of any such  
29 disallowed charge or refund the amount to the applicant. <sup>2</sup>If a  
30 charge is disallowed after payment to a professional or consultant  
31 who is not an employee of the municipality, the professional or  
32 consultant shall reimburse the municipality in the amount of any  
33 such disallowed charge.<sup>2</sup>

34 e. The Commissioner of Community Affairs shall promulgate  
35 rules and regulations pursuant to the "Administrative Procedure  
36 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the  
37 purposes of this section.<sup>2</sup> Within two years of the effective date  
38 of P.L. , c. (C. )(pending before the Legislature as this  
39 bill), the commissioner shall prepare and submit a report to the  
40 Governor, the President of the Senate, and the Speaker of the  
41 General Assembly. The report shall describe the appeals process  
42 established by section 3 of P.L. , c. (C. )(pending before the  
43 Legislature as this bill) and shall make recommendations for  
44 legislative or administrative action necessary to provide a fair  
45 and efficient appeals process.<sup>2</sup>

46 <sup>2</sup>4. Section 9 of P.L.1975, c.217 (C.52:27D-127) is amended to  
47 read as follows:

48 9. Construction board of appeals.

49 a. There shall be a construction board of appeals for each  
50 county to hear appeals from decisions by the enforcing agency  
51 provided that any municipality may establish its own construction  
52 board of appeals to hear appeals from decisions by the enforcing  
53 agency and further provided that where two or more  
54 municipalities have combined to appoint a construction official

1 and subcode officials such combined municipalities may establish  
2 a joint construction board of appeals. Any such municipal or joint  
3 board shall hear appeals from the decisions of the municipal or  
4 joint enforcing agency, as the case may be, instead of the county  
5 board.

6 Every construction board of appeals shall consist of five  
7 members. Each member of the board shall be qualified by  
8 experience or training to perform the duties of members of the  
9 construction board of appeals. In addition to the five regular  
10 members, each construction board of appeals shall include two  
11 special members, one of whom shall be a licensed professional  
12 engineer with municipal construction experience, and one of  
13 whom shall be a builder. The special members shall serve as  
14 additional members of the board in any case involving an appeal  
15 of municipal fees pursuant to P.L. , c. (C. ) (pending before  
16 the Legislature as this bill). Board members shall be appointed  
17 for a term of 4 years by the appointing authority of the county or  
18 municipality in question or, in the case of a joint municipal board,  
19 by means mutually determined by the governing bodies of such  
20 municipalities. For the members first appointed, the appointing  
21 authority shall designate the appointees' terms so that one shall  
22 be appointed for a term of 1 year, one for a term of 2 years, one  
23 for a term of 3 years, and two for a term of 4 years. Vacancies  
24 on the board shall be filled for the unexpired term. Members may  
25 be removed by the authority appointing them for cause. A person  
26 may serve on more than one construction board of appeals.

27 b. When an enforcing agency refuses to grant an application or  
28 refuses to act upon application for a construction permit, or when  
29 the enforcing agency makes any other decision, pursuant or  
30 related to this act or the code, an owner, or his authorized agent,  
31 may appeal in writing to the county or municipal or joint board,  
32 whichever is appropriate. The board shall hear the appeal, render  
33 a decision thereon and file its decision with a statement of the  
34 reasons therefor with the enforcing agency from which the appeal  
35 has been taken not later than 10 business days following the  
36 submission of the appeal, unless such period of time has been  
37 extended with the consent of the applicant. Such decision may  
38 affirm, reverse or modify the decision of the enforcing agency or  
39 remand the matter to the enforcing agency for further action. A  
40 copy of the decision shall be forwarded by certified or registered  
41 mail to the party taking the appeal. Failure by the board to hear  
42 an appeal and render and file a decision thereon within the time  
43 limits prescribed in this subsection shall be deemed a denial of  
44 the appeal for purposes of a complaint, application or appeal to a  
45 court of competent jurisdiction. A record of all decisions made  
46 by the board, properly indexed, shall be kept by the enforcing  
47 agency and shall be subject to public inspection during business  
48 hours. The board shall provide rules for its procedure in  
49 accordance with this act and regulations established by the  
50 commissioner.<sup>2</sup>

51 (cf: P.L.1975, c.217, s.9)

52 <sup>2</sup>[4.] <sup>5.2</sup> This act shall take effect <sup>2</sup>[90] <sup>180</sup><sup>2</sup> days after  
53 enactment <sup>2</sup>, except that a municipality may implement these  
54 policies prior thereto<sup>2</sup>.



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

3 4. This act shall take effect 90 days after enactment.  
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*Sponsors'* STATEMENT

The "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permits municipalities to charge applicants and developers for professional fees for the review and preparation of documents, the inspection of improvements, and for other purposes. This bill attempts to balance the municipality's need for expert and professional advice in the review of applications and the inspection of subdivision and site plan improvements mandated under the "Municipal Land Use Law," with the need for controlling municipal professional fees.

The bill places limits on the charges against the deposits and escrow accounts of applicants by municipal professionals and consultants; requires standardized accounting procedures for charges against the deposits and escrow accounts of developers; requires timely periodic statements to developers of activity against deposits and escrow accounts; establishes an appeal process for disputed charges beyond the municipal level; and requires a timely refund of remaining balances on deposit or in escrow accounts when development activity is complete.

The bill clarifies that charges for professional services may include those for review and preparation of documents. The bill also provides for an appeal process when the disputed charges cannot be resolved at the municipal level to the technical subcommittee of the Site Improvement Advisory Board, which was created pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.).

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Revises certain procedures regarding fees charged to developers under "Municipal Land Use Law."

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 518**

with Committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 7, 1994

The Assembly Housing Committee reports Assembly Bill No. 518 favorably, with committee amendments.

The "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permits municipalities to charge applicants and developers for professional fees for the review and preparation of documents, the inspection of improvements, and for other purposes. This bill attempts to balance the municipality's need for expert and professional advice in the review of applications and the inspection of subdivision and site plan improvements mandated under the "Municipal Land Use Law," with the need for controlling municipal professional fees.

The bill places limits on the charges against the deposits and escrow accounts of applicants by municipal professionals and consultants; requires standardized accounting procedures for charges against the deposits and escrow accounts of developers; requires timely periodic statements to developers of activity against deposits and escrow accounts; establishes an appeal process for disputed charges beyond the municipal level; and requires a timely refund of remaining balances on deposit or in escrow accounts when development activity is complete.

The bill clarifies that charges for professional services may include those for review and preparation of documents. The bill also provides for an appeal process when the disputed charges cannot be resolved at the municipal level to the technical subcommittee of the Site Improvement Advisory Board, which was created pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.).

The committee amended the bill to provide that a municipality may require that a deposit be made to an escrow account prior to proceeding on the application for development. In addition, the bill was amended to omit the requirement that a professional review follow a series of construction events, but rather that the review be based upon the approved development plans and documents. The committee also amended the bill to require that a developer questioning professional inspection charges notify the professional as well as the municipality.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 518

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 1995

The Senate Community Affairs Committee reports favorably and with committee amendments Assembly, No. 518 (1R).

As amended by the committee, this bill would amend the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) (hereinafter MLUL), by:

- placing limitations upon charges against deposits and escrow accounts of applicants established to cover the costs of the review and preparation of documents and the inspection of improvements by municipal professionals and consultants;
- setting forth guidelines for establishing the amounts required to be deposited;
- outlining procedures for implementation of the voucher system already required by law and authorizing the chief financial officer of the municipality to establish schedules and procedures for the submission of vouchers;
- requiring standardized accounting procedures for charges against the deposits and escrow accounts of developers;
- requiring timely periodic statements to developers of activity against deposits and escrow accounts;
- establishing an appeal process for disputed charges beyond the municipal level; and
- requiring a timely refund of remaining balances on deposit or in escrow accounts when development activity is complete.

Currently, the MLUL permits municipalities to charge applicants and developers for professional fees for the review and preparation of documents, the inspection of improvements, and for other purposes. This bill balances the municipality's need for expert and professional advice in the review of applications and the inspection of subdivision and site plan improvements mandated under the MLUL, with an applicant's need for supervision and accountability over deposits and escrow accounts maintained for the payment of municipal professional fees.

The committee amended the bill to:

- provide that the schedule of fees and charges for document reviews and inspections are to be established by resolution rather than by ordinance;
- specify that the amount of the initial deposit must be established by ordinance;
- specify that a voucher identifying the time spent performing a service must specify the time spent in one-quarter hour increments;
- specify that accountings of escrow accounts be provided by the chief financial officer of the municipality to each applicant quarterly, if monthly charges are \$1,000 or less, or monthly, if monthly charges exceed \$1,000;

- provide that any required health and safety inspections be made and charged back against the replenishment of funds in the event an escrow account or deposit has insufficient funds to cover the cost of the inspections; and

- designate the county construction board of appeals established under section 9 of P.L.1975, c.217 (C.52:27D-127) as the body to hear appeals brought by a developer over a municipal engineer's estimate of the costs of the installation of improvements and disputes concerning charges made by a professional for service rendered to the municipality. The bill originally named the technical subcommittee of the Site Improvement Advisory Board, which was created pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) as the appellate body.

The amendments would require that two special members be named to each construction board of appeals, one of whom must be a licensed professional engineer with municipal construction experience and one of whom must be a builder. The special members are to serve as additional members of the board when it hears appeals pursuant to the provisions of this bill.

The committee amendments name the chief financial officer of the municipality as the municipal representative responsible to:

- make payments to professionals for services rendered;
- establish schedules and procedures for the submission of vouchers by professionals;
- receive vouchers from professionals and statements from municipal employees;
- prepare and send an accounting of each deposit or escrow account to the appropriate applicant;
- notify an applicant if an escrow account balance or deposit has insufficient funds to cover the cost of a review or inspection;
- administer close-out procedures of all deposits and escrow accounts; and
- reimburse the appropriate deposit or escrow account in the amount of any charge that has been disallowed by the construction board of appeals after payment to the professional or refund the amount to the applicant.

The amendments would also require a professional or consultant who is not an employee of the municipality to reimburse the municipality the amount of any charge that has been disallowed by the county construction board of appeals after the professional or consultant has been paid.

The amendments would also require the Commissioner of Community Affairs to prepare and submit a report to the Governor, the President of the Senate and the Speaker of the General Assembly describing the appeals process established in this bill and providing recommendations as to how the appeals process could be made more fair and efficient.

Finally, the amendments provide that the bill's provisions would take effect 180 days after enactment, rather than 90 days thereafter, and specify that a municipality may in its discretion implement the bill's provisions prior to the effective date.

As amended, this bill is identical to the Senate Community Affairs Committee Substitute for Senate, No. 255, reported by this committee on February 6, 1995.