

40:55D-5 et al.

LEGISLATIVE HISTORY CHECKLIST
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(Municipal land
use law--various
amendments)

LAWS OF: 1991

CHAPTER: 256

Bill No: A1440

Sponsor(s): Doyle and Franks

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: Land Use

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: January 17, 1991

Senate: June 13, 1991

Date of Approval: August 13, 1991

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

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Reports: No

Hearings: No

KBG/SLJ

[FIRST REPRINT]
ASSEMBLY, No. 1440

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen DOYLE and FRANKS

1 AN ACT concerning municipal land use ¹[,] and¹ amending and
2 supplementing P.L.1975, c.291 and P.L.1979, c.216 ¹[and
3 amending P.L.1971, c.198]¹.
4

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

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

9 3.2. "Maintenance guarantee" means any security [, other than
10 cash,] which may be accepted by a municipality for the
11 maintenance of any improvements required by this act, including
12 but not limited to surety bonds, letters of credit under the
13 circumstances specified in section 16 of P.L. , c. (C.)
14 (now pending before the Legislature as this bill), and cash.

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

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

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

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

36 "Minor subdivision" means a subdivision of land for the
37 creation of a number of lots specifically permitted by ordinance
38 as a minor subdivision; provided that such subdivision does not
39 involve (1) a planned development, (2) any new street or (3) the
40 extension of any off-tract improvement, the cost of which is to

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:

¹ Senate SLM committee amendments adopted February 25, 1991.

1 be prorated pursuant to section 30 of [this act] P.L.1975, c.291
2 (C.40:55D-42).

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

5 "Municipal agency" means a municipal planning board or board
6 of adjustment, or a governing body of a municipality when acting
7 pursuant to this act and any agency which is created by or
8 responsible to one or more municipalities when such agency is
9 acting pursuant to this act.

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

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

20 "Nonconforming use" means a use or activity which was lawful
21 prior to the adoption, revision or amendment of a zoning
22 ordinance, but which fails to conform to the requirements of the
23 zoning district in which it is located by reasons of such adoption,
24 revision or amendment.

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

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

31 "Offsite" means located outside the lot lines of the lot in
32 question but within the property (of which the lot is a part) which
33 is the subject of a development application or contiguous portion
34 of a street or right-of-way.

35 "Off-tract" means not located on the property which is the
36 subject of a development application nor on a contiguous portion
37 of a street or right-of-way.

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

39 "On-tract" means located on the property which is the subject
40 of a development application or on a contiguous portion of a
41 street or right-of-way.

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

50 (cf: P.L.1979, c.216, s.3)

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

3 3.3. "Party immediately concerned" means for purposes of
4 notice any applicant for development, the owners of the subject
5 property and all owners of property and government agencies
6 entitled to notice under section 7.1 of P.L.1975, c.291
7 (C.40:55D-12).

8 "Performance guarantee" means any security, which may be
9 accepted by a municipality, including but not limited to surety
10 bonds, letters of credit under the circumstances specified in
11 section 16 of P.L. , c. (C.) (now pending before the
12 Legislature as this bill), and cash[; provided that a municipality
13 shall not require more than 10% of the total performance
14 guarantee in cash].

15 "Planned commercial development" means an area of a
16 minimum contiguous size as specified by ordinance to be
17 developed according to a plan as a single entity containing one or
18 more structures with appurtenant common areas to accommodate
19 commercial or office uses or both and any residential and other
20 uses incidental to the predominant use as may be permitted by
21 ordinance.

22 "Planned development" means planned unit development,
23 planned unit residential development, residential cluster, planned
24 commercial development or planned industrial development.

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

31 "Planned unit development" means an area with a specified
32 minimum contiguous acreage of 10 acres or more to be developed
33 as a single entity according to a plan, containing one or more
34 residential clusters or planned unit residential developments and
35 one or more public, quasi-public, commercial or industrial areas
36 in such ranges of ratios of nonresidential uses to residential uses
37 as shall be specified in the zoning ordinance.

38 "Planned unit residential development" means an area with a
39 specified minimum contiguous acreage of 5 acres or more to be
40 developed as a single entity according to a plan containing one or
41 more residential clusters, which may include appropriate
42 commercial, or public or quasi-public uses all primarily for the
43 benefit of the residential development.

44 "Planning board" means the municipal planning board
45 established pursuant to section 14 of [this act] P.L.1975, c.291
46 (C.40:55D-23).

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

48 "Preliminary approval" means the conferral of certain rights
49 pursuant to sections 34, 36 and 37 of [this act] P.L.1975, c.291
50 (C.40:55D-46; C.40:55D-48; and C.40:55D-49) prior to final

1 approval after specific elements of a development plan have been
2 agreed upon by the planning board and the applicant.

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

7 "Public areas" means (1) public parks, playgrounds, trails, paths
8 and other recreational areas; (2) other public open spaces; (3)
9 scenic and historic sites; and (4) sites for schools and other public
10 buildings and structures.

11 "Public development proposal" means a master plan, capital
12 improvement program or other proposal for land development
13 adopted by the appropriate public body, or any amendment
14 thereto.

15 "Public Drainage Way" means the land reserved or dedicated
16 for the installation of storm water sewers or drainage ditches, or
17 required along a natural stream or watercourse for preserving the
18 biological as well as drainage function of the channel and
19 providing for the flow of water to safeguard the public against
20 flood damage, sedimentation and erosion and to assure the
21 adequacy of existing and proposed culverts and bridges, to induce
22 water recharge into the ground where practical, and to lessen
23 nonpoint pollution.

24 "Public open space" means an open space area conveyed or
25 otherwise dedicated to a municipality, municipal agency, board of
26 education, State or county agency, or other public body for
27 recreational or conservational uses.

28 "Quorum" means the majority of the full authorized
29 membership of a municipal agency.

30 "Residential cluster" means an area to be developed as a single
31 entity according to a plan containing residential housing units
32 which have a common or public open space area as an
33 appurtenance.

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

37 "Resubdivision" means (1) the further division or relocation of
38 lot lines of any lot or lots within a subdivision previously made
39 and approved or recorded according to law or (2) the alteration of
40 any streets or the establishment of any new streets within any
41 subdivision previously made and approved or recorded according
42 to law, but does not include conveyances so as to combine
43 existing lots by deed or other instrument.

44 (cf: P.L.1981, c.32, s.9)

45 3. Section 8 of P.L.1975, c.291 (C.40:55D-17) is amended to
46 read as follows:

47 8. Appeal to the governing body; time; notice; modification;
48 stay of proceedings. a. Any interested party may appeal to the
49 governing body any final decision of a board of adjustment
50 approving an application for development pursuant to subsection

1 [57] d. of [this act] section 57 of P.L.1975, c.291 (C.40:55D-70), if
2 so permitted by ordinance. Such appeal shall be made within 10
3 days of the date of publication of such final decision pursuant to
4 subsection [6] i. of section 6 of P.L.1975, c.291 (C.40:55D-10). In
5 the case of any board established pursuant to article 10 of [this
6 act] P.L.1975, c.291, the governing body of the municipality in
7 which the land is situated shall be the "governing body" for
8 purposes of this section. The appeal to the governing body shall
9 be made by serving the municipal clerk in person or by certified
10 mail with a notice of appeal, specifying the grounds thereof and
11 the name and address of the appellant and name and address of
12 his attorney, if represented. Such appeal shall be decided by the
13 governing body only upon the record established before the
14 [planning board or] board of adjustment.

15 b. Notice of the meeting to review the record below shall be
16 given by the governing body by personal service or certified mail
17 to the appellant, to those entitled to notice of a decision pursuant
18 to subsection [6] h. of section 6 of P.L.1975, c.291 (C.40:55D-10)
19 and to the board from which the appeal is taken, at least 10 days
20 prior to the date of the meeting. The parties may submit oral
21 and written argument on the record at such meeting, and the
22 governing body shall provide for verbatim recording and
23 transcripts of such meeting pursuant to subsection [6] f. of
24 section 6 of P.L.1975, c.291 (C.40:55D-10).

25 c. The appellant shall, (1) within five days of service of the
26 notice of the appeal pursuant to subsection a. hereof, arrange for
27 a transcript pursuant to subsection f. of section 6 of [this act]
28 P.L.1975, c.291 (C.40:55D-10) for use by the governing body and
29 pay a deposit of \$50.00 or the estimated cost of such transcript,
30 whichever is less, or (2) within 35 days of service of the notice of
31 appeal, submit a transcript as otherwise arranged to the
32 municipal clerk; otherwise, the appeal may be dismissed for
33 failure to prosecute.

34 The governing body shall conclude a review of the record below
35 not later than 95 days from the date of publication of notice of
36 the decision below pursuant to subsection i. of section 6 of [this
37 act] P.L.1975, c.291 (C.40:55D-10), unless the applicant consents
38 in writing to an extension of such period. Failure of the
39 governing body to hold a hearing and conclude a review of the
40 record below and to render a decision within such specified period
41 shall constitute a decision affirming the action of the board.

42 d. The governing body may reverse, remand, or affirm with or
43 without the imposition of conditions the final decision of the
44 board of adjustment approving a variance pursuant to subsection
45 d. of section 57 of P.L.1975, c.291 (C.40:55D-70). The review
46 shall be made on the record made before the board of adjustment.

47 e. The affirmative vote of a majority of the full authorized
48 membership of the governing body shall be necessary to reverse[,]
49 or remand[,] to the board of adjustment or [affirm with or
50 without] to impose conditions on or alter conditions to any final

1 action of the board of adjustment. Otherwise the final action of
2 the board of adjustment shall be deemed to be affirmed; a tie
3 vote of the governing body shall constitute affirmance of the
4 decision of the board of adjustment.

5 f. An appeal to the governing body shall stay all proceedings in
6 furtherance of the action in respect to which the decision
7 appealed from was made, unless the board from whose action the
8 appeal is taken certifies to the governing body, after the notice
9 of appeal shall have been filed with such board, that by reason of
10 facts stated in the certificate, a stay would, in its opinion, cause
11 imminent peril to life or property. In such case, proceedings shall
12 not be stayed other than by an order of the Superior Court on
13 application upon notice to the board from whom the appeal is
14 taken and on good cause shown.

15 g. The governing body shall mail a copy of the decision to the
16 appellant or, if represented, then to his attorney, without
17 separate charge, and for a reasonable charge to any interested
18 party who has requested it, not later than 10 days after the date
19 of the decision. A brief notice of the decision shall be published
20 in the official newspaper of the municipality, if there be one, or
21 in a newspaper of general circulation in the municipality. Such
22 publication shall be arranged by the applicant unless a particular
23 municipal officer is so designated by ordinance; provided that
24 nothing contained herein shall be construed as preventing the
25 applicant from arranging such publication if he so desires. The
26 governing body may make a reasonable charge for its
27 publication. The period of time in which an appeal to a court of
28 competent jurisdiction may be made shall run from the first
29 publication, whether arranged by the municipality or the
30 applicant.

31 h. Nothing in this act shall be construed to restrict the right of
32 any party to obtain a review by any court of competent
33 jurisdiction, according to law.

34 (cf: P.L.1984, c.20, s.6)

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

37 14. Planning board membership. a. The governing body may,
38 by ordinance, create a planning board of seven or nine members.
39 The membership shall consist of, for convenience in designating
40 the manner of appointment, the four following classes:

41 Class I--the mayor or, in the case of the council-manager form
42 of government pursuant to the ["] Optional Municipal Charter
43 Law,["] P.L.1950, c.210 (C.40:69A-1 et seq.) or ["The Municipal
44 Manager Form of Government Law" (Subtitle 5 of Title 40 of the
45 Revised Statutes)] "the municipal manager form of government
46 law," R.S.40:79-1 et seq., the manager, if so provided by the
47 aforesaid ordinance.

48 Class II--one of the officials of the municipality other than a
49 member of the governing body, to be appointed by the mayor;
50 provided that if there be an environmental commission,

1 the member of the environmental commission who is also a
2 member of the planning board as required by section 1 of
3 P.L.1968, c.245 (C.40:56A-1), shall be deemed to be the Class II
4 planning board member for purposes of this act in the event that
5 there be among the Class IV or alternate members of the
6 planning board both a member of the zoning board of adjustment
7 and a member of the board of education.

8 Class III--a member of the governing body to be appointed by
9 it[, except that no member for Class III shall be appointed to the
10 planning board if the governing body consists of only three
11 members].

12 Class IV--other citizens of the municipality, to be appointed
13 by the mayor or, in the case of the council-manager form of
14 government pursuant to the ["Optional Municipal Charter
15 Law,[" P.L.1950, c.210 (C.40:69A-1 et seq.) or ["The Municipal
16 Manager Form of Government Law" (Subtitle 5 of Title 40 of the
17 Revised Statutes)] "the municipal manager form of government
18 law," R.S.40:79-1 et seq., by the council, if so provided by the
19 aforesaid ordinance.

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

42 b. The term of the member composing Class I shall correspond
43 to his official tenure. The terms of the members composing
44 Class II and Class III shall be for one year or terminate at the
45 completion of their respective terms of office, whichever occurs
46 first, except for a Class II member who is also a member of the
47 environmental commission. The term of a Class II or Class IV
48 member who is also a member of the environmental commission
49 shall be for three years or terminate at the completion of his
50 term of office as a member of the environmental commission,

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

19 (cf: P.L.1985, c.516, s.7)

20 5. (New section) If the planning board lacks a quorum because
21 any of its regular or alternate members is prohibited by
22 subsection b. of section 14 of P.L.1975, c.291 (C.40:55D-23) or
23 section 13 of P.L.1979, c.216 (C.40:55D-23.1) from acting on a
24 matter due to the member's personal or financial interests
25 therein, regular members of the board of adjustment shall be
26 called upon to serve, for that matter only, as temporary members
27 of the planning board in order of seniority of continuous service
28 to the board of adjustment until there are the minimum number
29 of members necessary to constitute a quorum to act upon the
30 matter without any personal or financial interest therein,
31 whether direct or indirect. If a choice has to be made between
32 regular members of equal seniority, the chairman of the board of
33 adjustment shall make the choice.

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

36 25. Issuance of permits for buildings or structures. For
37 purpose of preserving the integrity of the official map of a
38 municipality no permit shall be issued for any building or
39 structure in the bed on any street or public drainage way, flood
40 control basin or public area reserved pursuant to section 23
41 [hereof] of P.L.1975, c.291 (C.40:55D-32) as shown on the official
42 map, or shown on a plat filed pursuant to this act before adoption
43 of the official map, except as herein provided. Whenever one or
44 more parcels of land, upon which is located the bed of such a
45 mapped street or public drainage way, flood control basin or
46 public area reserved pursuant to section 23 [hereof] of P.L.1975,
47 c.291 (C.40:55D-32), cannot yield a reasonable return to the
48 owner unless a building permit is granted, the board of
49 adjustment, in any municipality which has established such a
50 board, may, in a specific case, by an affirmative vote of a

1 majority of the full authorized membership of the board, direct
2 the issuance of a permit for a building or structure in the bed of
3 such mapped street or public drainage way or flood control basin
4 or public area reserved pursuant to section 23 [hereof] of
5 P.L.1975, c.291 (C.40:55D-32), which will as little as practicable
6 increase the cost of opening such street, or tend to cause a
7 minimum change of the official map and the board shall impose
8 reasonable requirements as a condition of granting the permit so
9 as to promote the health, morals, safety and general welfare of
10 the public. Sections 59 through 62 of [this act] P.L.1975, c.291
11 (C.40:55D-72 through C.40:55D-75) shall apply to applications or
12 appeals pursuant to this section. In any municipality in which
13 there is no board of adjustment, the planning board shall have the
14 same powers and be subject to the same restrictions as provided
15 in this section.

16 The board of adjustment shall not exercise the power otherwise
17 granted by this section if the proposed development requires
18 approval by the planning board of a subdivision, site plan or
19 conditional use in conjunction with which the planning board has
20 power to direct the issuance of a permit pursuant to subsection b.
21 of section 47 of P.L.1975, c.291 (C.40:55D-60).

22 (cf: P.L.1975, c.291, s.25)

23 7. Section 27 of P.L.1975, c.291 (C.40:55D-36) is amended to
24 read as follows:

25 27. Appeals. Where the enforcement of section 26 [hereof] of
26 P.L.1975, c.291 (C.40:55D-35) would entail practical difficulty or
27 unnecessary hardship, or where the circumstances of the case do
28 not require the building or structure to be related to a street, the
29 board of adjustment may upon application or appeal, vary the
30 application of section 26 of [this act] P.L.1975, c.291
31 (C.40:55D-35) and direct the issuance of a permit subject to
32 conditions that will provide adequate access for firefighting
33 equipment, ambulances and other emergency vehicles necessary
34 for the protection of health and safety and that will protect any
35 future street layout shown on the official map or on a general
36 circulation plan element of the municipal master plan pursuant to
37 paragraph (4) of subsection [19b] b. of section 19 of P.L.1975,
38 c.291 (C.40:55D-28).

39 Sections 59 through 62 of [this act] P.L.1975, c.291
40 (C.40:55D-72 through C.40:55D-75) shall apply to applications or
41 appeals pursuant to this section. In any municipality in which
42 there is no board of adjustment, the planning board shall have the
43 same powers and be subject to the same restrictions as provided
44 in this section.

45 The board of adjustment shall not exercise the power otherwise
46 granted by this section if the proposed development requires
47 approval by the planning board of a subdivision, site plan or
48 conditional use in conjunction with which the planning board has
49 power to direct the issuance of a permit pursuant to subsection c.
50 of section 47 of P.L.1975, c.291 (C.40:55D-60).

1 (cf: P.L.1975, c.291, s.27)

2 8. Section 14 of P.L.1979, c.216 (C.40:55D-46.1) is amended to
3 read as follows:

4 14. An ordinance requiring, pursuant to section 7.1 of [this act]
5 P.L.1975, c.291 (C.40:55D-12), notice of hearings on applications
6 for development for conventional site plans, may authorize the
7 planning board to waive notice and public hearing for an
8 application for development, if the planning board or site plan
9 subcommittee of the board appointed by the chairman finds that
10 the application for development conforms to the definition of
11 "minor site plan." Minor site plan approval shall be deemed to be
12 final approval of the site plan by the board, provided that the
13 board or said subcommittee may condition such approval on terms
14 ensuring the provision of improvements pursuant to sections 29,
15 29.1, 29.3 and 41 of [this act] P.L.1975, c.291 (C.40:55D-38,
16 40:55D-39, 40:55D-41 and 40:55D-53).

17 a. Minor site plan approval shall be granted or denied within 45
18 days of the date of submission of a complete application to the
19 administrative officer, or within such further time as may be
20 consented to by the applicant. Failure of the planning board to
21 act within the period prescribed shall constitute minor site plan
22 approval.

23 b. Whenever review or approval of the application by the
24 county planning board is required by section 8 of P.L.1968, c.285
25 (C.40:27-6.6), the municipal planning board shall condition any
26 approval that it grants upon timely receipt of a favorable report
27 on the application by the county planning board or approval by
28 the county planning board by its failure to report thereon within
29 the required time period.

30 c. The zoning requirements and general terms and conditions,
31 whether conditional or otherwise, upon which minor site plan
32 approval was granted, shall not be changed for a period of 2 years
33 after the date of minor site plan approval. The planning board
34 shall grant an extension of this period for a period determined by
35 the board but not exceeding one year from what would otherwise
36 be the expiration date, if the developer proves to the reasonable
37 satisfaction of the board that the developer was barred or
38 prevented, directly or indirectly, from proceeding with the
39 development because of delays in obtaining legally required
40 approvals from other governmental entities and that the
41 developer applied promptly for and diligently pursued the
42 approvals. A developer shall apply for this extension before: (1)
43 what would otherwise be the expiration date, or (2) the 91st day
44 after the date on which the developer receives the last of the
45 legally required approvals from the other governmental entities,
46 whichever occurs later.

47 (cf: P.L.1979, c.216, s.14)

48 9. Section 35 of P.L.1975, c.291 (C.40:55D-47) is amended to
49 read as follows:

50 35. a. Minor subdivision. An ordinance requiring approval of

1 subdivisions by the planning board may authorize the planning
2 board to waive notice and public hearing for an application for
3 development if the planning board or subdivision committee of
4 the board appointed by the chairman find that the application for
5 development conforms to the definition of "minor subdivision" in
6 section 3.2 of [this act] P.L.1975, c.291 (C.40:55D-5). Minor
7 subdivision approval shall be deemed to be final approval of the
8 subdivision by the board; provided that the board or said
9 subcommittee may condition such approval on terms ensuring the
10 provision of improvements pursuant to sections 29, 29.1, 29.2 and
11 41 of [this act] P.L.1975, c.291 (C.40:55D-38, C.40:55D-39,
12 C.40:55D-40, and C.40:55D-53).

13 b. Minor subdivision approval shall be granted or denied within
14 45 days of the date of submission of a complete application to the
15 administrative officer, or within such further time as may be
16 consented to by the applicant. Failure of the planning board to
17 act within the period prescribed shall constitute minor subdivision
18 approval and a certificate of the administrative officer as to the
19 failure of the planning board to act shall be issued on request of
20 the applicant; and it shall be sufficient in lieu of the written
21 endorsement or other evidence of approval, herein required, and
22 shall be so accepted by the county recording officer for purposes
23 of filing subdivision plats.

24 c. Whenever review or approval of the application by the
25 county planning board is required by section 5 of P.L.1968, c.285
26 (C.40:27-6.3), the municipal planning board shall condition any
27 approval that it grants upon timely receipt of a favorable report
28 on the application by the county planning board or approval by
29 the county planning board by its failure to report thereon within
30 the required time period.

31 [Approval] d. Except as provided in subsection f. of this
32 section, approval of a minor subdivision shall expire 190 days
33 from the date [of] on which the resolution of municipal approval
34 is adopted unless within such period a plat in conformity with
35 such approval and the provisions of the "Map Filing Law,"
36 P.L.1960, c.141 (C.46:23-9.9 et seq.), or a deed clearly describing
37 the approved minor subdivision is filed by the developer with the
38 county recording officer, the municipal engineer and the
39 municipal tax assessor. Any such plat or deed accepted for such
40 filing shall have been signed by the chairman and secretary of the
41 planning board. In reviewing the application for development for
42 a proposed minor subdivision the planning board may be permitted
43 by ordinance to accept a plat not in conformity with the "Map
44 Filing Act," P.L.1960, c.141 (C.46:23-9.9 et seq.); provided that
45 if the developer chooses to file the minor subdivision as provided
46 herein by plat rather than deed such plat shall conform with the
47 provisions of said act.

48 e. The zoning requirements and general terms and conditions,
49 whether conditional or otherwise, upon which minor subdivision
50 approval was granted, shall not be changed for a period of 2 years

1 after the date [of] on which the resolution of minor subdivision
2 approval is adopted; provided that the approved minor subdivision
3 shall have been duly recorded as provided in this section.

4 f. The planning board may extend the 190-day period for filing
5 a minor subdivision plat or deed pursuant to subsection d. of this
6 section if the developer proves to the reasonable satisfaction of
7 the planning board (1) that the developer was barred or
8 prevented, directly or indirectly, from filing because of delays in
9 obtaining legally required approvals from other governmental or
10 quasi-governmental entities and (2) that the developer applied
11 promptly for and diligently pursued the required approvals. The
12 length of the extension shall be equal to the period of delay
13 caused by the wait for the required approvals, as determined by
14 the planning board. The developer may apply for the extension
15 either before or after what would otherwise be the expiration
16 date.

17 g. The planning board shall grant an extension of minor
18 subdivision approval for a period determined by the board but not
19 exceeding one year from what would otherwise be the expiration
20 date, if the developer proves to the reasonable satisfaction of the
21 board that the developer was barred or prevented, directly or
22 indirectly, from proceeding with the development because of
23 delays in obtaining legally required approvals from other
24 governmental entities and that the developer applied promptly
25 for and diligently pursued the required approvals. A developer
26 shall apply for the extension before (1) what would otherwise be
27 the expiration date of minor subdivision approval or (2) the 91st
28 day after the developer receives the last legally required
29 approval from other governmental entities, whichever occurs
30 later.

31 (cf: P.L.1975, c.291, s.35)

32 10. Section 37 of P.L.1975, c.291 (C.40:55D-49) is amended to
33 read as follows:

34 37. Effect of preliminary approval. Preliminary approval of a
35 major subdivision pursuant to section 36 of [this act] P.L.1975,
36 c.291 (C.40:55D-48) or of a site plan pursuant to section 34 of
37 [this act] P.L.1975, c.291 (C.40:55D-46) shall, except as provided
38 in subsection d. of this section, confer upon the applicant the
39 following rights for a 3-year period from the date [of] on which
40 the resolution of preliminary approval is adopted:

41 a. That the general terms and conditions on which preliminary
42 approval was granted shall not be changed, including but not
43 limited to use requirements; layout and design standards for
44 streets, curbs and sidewalks; lot size; yard dimensions and
45 off-tract improvements; and, in the case of a site plan, any
46 requirements peculiar to site plan approval pursuant to
47 [subsection] section 29.3 of [this act] P.L.1975, c.291
48 (C.40:55D-41); except that nothing herein shall be construed to
49 prevent the municipality from modifying by ordinance such
50 general terms and conditions of preliminary approval as relate to

1 public health and safety;

2 b. That the applicant may submit for final approval on or
3 before the expiration date of preliminary approval the whole or a
4 section or sections of the preliminary subdivision plat or site
5 plan, as the case may be; and

6 c. That the applicant may apply for and the planning board
7 may grant extensions on such preliminary approval for additional
8 periods of at least 1 year but not to exceed a total extension of 2
9 years, provided that if the design standards have been revised by
10 ordinance, such revised standards may govern.

11 d. In the case of a subdivision of or site plan for an area of 50
12 acres or more, the planning board may grant the rights referred
13 to in subsections a., b., and c. [above] of this section for such
14 period of time, longer than 3 years, as shall be determined by the
15 planning board to be reasonable taking into consideration (1) the
16 number of dwelling units and nonresidential floor area permissible
17 under preliminary approval, (2) economic conditions, and (3) the
18 comprehensiveness of the development. The applicant may apply
19 for thereafter and the planning board may thereafter grant an
20 extension to preliminary approval for such additional period of
21 time as shall be determined by the planning board to be
22 reasonable taking into consideration (1) the number of dwelling
23 units and nonresidential floor area permissible under preliminary
24 approval, and (2) the potential number of dwelling units and
25 nonresidential floor area of the section or sections awaiting final
26 approval, (3) economic conditions and (4) the comprehensiveness
27 of the development; provided that if the design standards have
28 been revised, such revised standards may govern.

29 e. Whenever the planning board grants an extension of
30 preliminary approval pursuant to subsection c. or d. of this
31 section and preliminary approval has expired before the date on
32 which the extension is granted, the extension shall begin on what
33 would otherwise be the expiration date. The developer may apply
34 for the extension either before or after what would otherwise be
35 the expiration date.

36 f. The planning board shall grant an extension of preliminary
37 approval for a period determined by the board but not exceeding
38 one year from what would otherwise be the expiration date, if the
39 developer proves to the reasonable satisfaction of the board that
40 the developer was barred or prevented, directly or indirectly,
41 from proceeding with the development because of delays in
42 obtaining legally required approvals from other governmental
43 entities and that the developer applied promptly for and
44 diligently pursued the required approvals. A developer shall apply
45 for the extension before (1) what would otherwise be the
46 expiration date of preliminary approval or (2) the 91st day after
47 the developer receives the last legally required approval from
48 other governmental entities, whichever occurs later. An
49 extension granted pursuant to this subsection shall not preclude
50 the planning board from granting an extension pursuant to

1 subsection c. or d. of this section.

2 (cf: P.L.1975, c.291, s.37)

3 11. Section 40 of P.L.1975, c.291 (C.40:55D-52) is amended to
4 read as follows:

5 40. Effect of final approval of a site plan or major
6 subdivision. a. The zoning requirements applicable to the
7 preliminary approval first granted and all other rights conferred
8 upon the developer pursuant to section 37 of [this act] P.L.1975,
9 c.291 (C.40:55D-49), whether conditionally or otherwise, shall not
10 be changed for a period of two years after the date [of] on which
11 the resolution of final approval is adopted; provided that in the
12 case of a major subdivision the rights conferred by this section
13 shall expire if the plat has not been duly recorded within the time
14 period provided in section 42 of [this act] P.L.1975, c.291
15 (C.40:55D-54). If the developer has followed the standards
16 prescribed for final approval, and, in the case of a subdivision,
17 has duly recorded the plat as required in section 42 of [this act]
18 P.L.1975, c.291 (C.40:55D-54), the planning board may extend
19 such period of protection for extensions of one year but not to
20 exceed three extensions. Notwithstanding any other provisions of
21 this act, the granting of final approval terminates the time period
22 of preliminary approval pursuant to section 37 of [this act]
23 P.L.1975, c.291 (C.40:55D-49) for the section granted final
24 approval.

25 b. In the case of a subdivision or site plan for a planned
26 development of 50 acres or more, conventional subdivision or site
27 plan for 150 acres or more, or site plan for development of a
28 nonresidential floor area of 200,000 square feet or more, the
29 planning board may grant the rights referred to in subsection a.
30 of this section for such period of time, longer than two years, as
31 shall be determined by the planning board to be reasonable taking
32 into consideration (1) the number of dwelling units and
33 nonresidential floor area permissible under final approval, (2)
34 economic conditions and (3) the comprehensiveness of the
35 development. The developer may apply for thereafter, and the
36 planning board may thereafter grant, an extension of final
37 approval for such additional period of time as shall be determined
38 by the planning board to be reasonable taking into consideration
39 (1) the number of dwelling units and nonresidential floor area
40 permissible under final approval, (2) the number of dwelling units
41 and nonresidential floor area remaining to be developed, (3)
42 economic conditions and (4) the comprehensiveness of the
43 development.

44 c. Whenever the planning board grants an extension of final
45 approval pursuant to subsection a. or b. of this section and final
46 approval has expired before the date on which the extension is
47 granted, the extension shall begin on what would otherwise be the
48 expiration date. The developer may apply for the extension
49 either before or after what would otherwise be the expiration
50 date.

1 d. The planning board shall grant an extension of final approval
2 for a period determined by the board but not exceeding one year
3 from what would otherwise be the expiration date, if the
4 developer proves to the reasonable satisfaction of the board that
5 the developer was barred or prevented, directly or indirectly,
6 from proceeding with the development because of delays in
7 obtaining legally required approvals from other governmental
8 entities and that the developer applied promptly for and
9 diligently pursued these approvals. A developer shall apply for
10 the extension before (1) what would otherwise be the expiration
11 date of final approval or (2) the 91st day after the developer
12 receives the last legally required approval from other
13 governmental entities, whichever occurs later. An extension
14 granted pursuant to this subsection shall not preclude the
15 planning board from granting an extension pursuant to subsection
16 a. or b. of this section.

17 (cf: P.L.1985, c.93, s.1)

18 ~~12. Section 41 of P.L.1975, c.291 (C.40:55D-53) is amended to~~
19 ~~read as follows:~~

20 41. Guarantees required; surety; release. a. Before recording
21 of final subdivision plats or as a condition of final site plan
22 approval or as a condition to the issuance of a zoning permit
23 pursuant to subsection [52d.] d. of section 52 of [this act]
24 P.L.1975, c.291 (C.40:55D-65), the approving authority may
25 require and shall accept in accordance with the standards adopted
26 by ordinance for the purpose of assuring the installation and
27 maintenance of on-tract improvements:

28 (1) The furnishing of a performance guarantee in favor of the
29 municipality in an amount not to exceed 120% of the cost of
30 installation, which cost shall be determined by the municipal
31 engineer according to the method of calculation set forth in
32 section 15 of P.L. , c. (C.) (now pending before the
33 Legislature as this bill), for improvements [it] which the
34 approving authority may deem necessary or appropriate
35 including: streets, grading, pavement, gutters, curbs, sidewalks,
36 street lighting, shade trees, surveyor's monuments, as shown on
37 the final map and required by the "Map Filing Law," P.L.1960.
38 c.141 (C.46:23-9.9 et seq.), water mains, culverts, storm sewers,
39 sanitary sewers or other means of sewage disposal, drainage
40 structures, erosion control and sedimentation control devices,
41 public improvements of open space and, in the case of site plans
42 only, other on-site improvements and landscaping.

43 The municipal engineer shall prepare an itemized cost estimate
44 of the improvements covered by the performance guarantee,
45 which itemized cost estimate shall be appended to each
46 performance guarantee posted by the obligor.

47 (2) Provision for a maintenance guarantee to be posted with
48 the governing body for a period not to exceed 2 years after final
49 acceptance of the improvement, in an amount not to exceed 15%
50 of the cost of the improvement, which cost shall be determined

1 by the municipal engineer according to the method of calculation
2 set forth in section 15 of P.L. , c. (C.) (now pending
3 before the Legislature as this bill). In the event that other
4 governmental agencies or public utilities automatically will own
5 the utilities to be installed or the improvements are covered by a
6 performance or maintenance guarantee to another governmental
7 agency, no performance or maintenance guarantee, as the case
8 may be, shall be required by the municipality for such utilities or
9 improvements.

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

20 c. If the required improvements are not completed or
21 corrected in accordance with the performance guarantee, the
22 obligor and surety, if any, shall be liable thereon to the
23 municipality for the reasonable cost of the improvements not
24 completed or corrected and the municipality may either prior to
25 or after the receipt of the proceeds thereof complete such
26 improvements. Such completion or correction of improvements
27 shall ¹[not]¹ be subject to the public bidding requirements of the
28 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1
29 et seq.)¹, as long as no public monies are expended for the
30 completion or correction]¹.

31 d. (1) Upon substantial completion of all required street
32 improvements (except for the top course) and appurtenant utility
33 improvements, and the connection of same to the public system,
34 the obligor may [notify] request of the governing body in writing,
35 by certified mail-addressed in care of the municipal clerk [of the
36 completion or substantial completion of improvements and], that
37 the municipal engineer prepare, in accordance with the itemized
38 cost estimate prepared by the municipal engineer and appended
39 to the performance guarantee pursuant to subsection a. of this
40 section, a list of all uncompleted or unsatisfactory completed
41 improvements. If such a request is made, the obligor shall send a
42 copy [thereof] of the request to the municipal engineer. The
43 request shall indicate which improvements have been completed
44 and which improvements remain uncompleted in the judgment of
45 the obligor. Thereupon the municipal engineer shall inspect all
46 improvements [of which such notice has been given] covered by
47 the obligor's request and shall file a detailed list and report, in
48 writing, with the governing body, [indicating either approval,
49 partial approval or rejection of such improvements with a
50 statement of reasons for any rejection. The cost of the

1 improvements as approved or rejected shall be set forth] and shall
2 simultaneously send a copy thereof to the obligor not later than
3 45 days after receipt of the obligor's request.

4 (2) The list prepared by the municipal engineer shall state, in
5 detail, with respect to each improvement determined to be
6 incomplete or unsatisfactory, the nature and extent of the
7 incompleteness of each incomplete improvement or the nature
8 and extent of, and remedy for, the unsatisfactory state of each
9 completed improvement determined to be unsatisfactory. The
10 report prepared by the municipal engineer shall identify each
11 improvement determined to be complete and satisfactory
12 together with a recommendation as to the amount of reduction to
13 be made in the performance guarantee relating to the completed
14 and satisfactory improvement, in accordance with the itemized
15 cost estimate prepared by the municipal engineer and appended
16 to the performance guarantee pursuant to subsection a. of this
17 section.

18 ~~e. [The governing body shall either approve, partially approve~~
19 ~~or reject the improvements, on the basis of the report of the~~
20 ~~municipal engineer and shall notify the obligor in writing, by~~
21 ~~certified mail, of the contents of said report and the action of~~
22 ~~said approving authority with relation thereto, not later than 65~~
23 ~~days after receipt of the notice from the obligor of the~~
24 ~~completion of the improvements. Where partial approval is~~
25 ~~granted] (1) The governing body, by resolution, shall either~~
26 ~~approve the improvements determined to be complete and~~
27 ~~satisfactory by the municipal engineer, or reject any or all of~~
28 ~~these improvements upon the establishment in the resolution of~~
29 ~~cause for rejection, and shall approve and authorize the amount~~
30 ~~of reduction to be made in the performance guarantee relating to~~
31 ~~the improvements accepted, in accordance with the itemized cost~~
32 ~~estimate prepared by the municipal engineer and appended to the~~
33 ~~performance guarantee pursuant to subsection a. of this section.~~
34 ~~This resolution shall be adopted not later than 45 days after~~
35 ~~receipt of the list and report prepared by the municipal engineer.~~
36 ~~Upon adoption of the resolution by the governing body, the~~
37 ~~obligor shall be released from all liability pursuant to its~~
38 ~~performance guarantee, with respect to those approved~~
39 ~~improvements, except for that portion adequately sufficient to~~
40 ~~secure [provision] completion or correction of the improvements~~
41 ~~not yet approved; provided that 30% of the amount of the~~
42 ~~performance guarantee posted may be retained to ensure~~
43 ~~completion and acceptability of all improvements. [Failure of~~
44 ~~the governing body to send or provide such notification to the~~
45 ~~obligor within 65 days shall be deemed to constitute approval of~~
46 ~~the improvements and the obligor and surety, if any, shall be~~
47 ~~released from all liability pursuant to such performance~~
48 ~~guarantee for such improvements.]~~

49 (2) If the municipal engineer fails to send or provide the list
50 and report as requested by the obligor pursuant to subsection d.

1 of this section within 45 days from receipt of the request, the
2 obligor may apply to the court in a summary manner for an order
3 compelling the municipal engineer to provide the list and report
4 within a stated time and the cost of applying to the court,
5 including reasonable attorney's fees, may be awarded to the
6 prevailing party.

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

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

28 f. If any portion of the required improvements [are] is
29 rejected, the approving authority may require the obligor to
30 complete or correct such improvements and, upon completion or
31 correction, the same procedure of notification, as set forth in
32 this section shall be followed.

33 g. Nothing herein, however, shall be construed to limit the
34 right of the obligor to contest by legal proceedings any
35 determination of the governing body or the municipal engineer.

36 h. The obligor shall reimburse the municipality for all
37 reasonable inspection fees paid to the municipal engineer for the
38 foregoing inspection of improvements; provided that the
39 municipality may require of the developer a deposit for [all or a
40 portion of the reasonably anticipated fees to be paid to the
41 municipal engineer for such inspection] the inspection fees in an
42 amount not to exceed, except for extraordinary circumstances,
43 the greater of \$500 or 5% of the cost of improvements, which
44 cost shall be determined pursuant to section 15 of P.L. , c.
45 (C.) (now pending before the Legislature as this bill).

46 i. In the event that final approval is by stages or sections of
47 development pursuant to subsection a. of section 29 of [this act]
48 P.L.1975, c.291 (C.40:55D-38), the provisions of this section shall
49 be applied by stage or section.
50 (cf: P.L.1979, c.216, s.17)

1 13. (New section) The municipality shall make all of the
2 payments to professionals for services rendered to the
3 municipality for review of applications for development, review
4 and preparation of documents, inspection of improvements or
5 other purposes under the provisions of P.L.1975, c.291
6 (C.40:55D-1 et seq.). If the municipality requires of the
7 developer a deposit toward anticipated municipal expenses for
8 these professional services, the deposit shall be placed in an
9 escrow account pursuant to section 1 of P.L.1985, c.315
10 (C.40:55D-53.1). The amount of the deposit required shall be
11 reasonable in regard to the scale and complexity of the
12 development. All payments charged to the deposit shall be
13 pursuant to vouchers from the professionals stating the hours
14 spent, the hourly rate and the expenses incurred. The
15 municipality shall render a written final accounting to the
16 developer on the uses to which the deposit was put. Thereafter
17 the municipality shall, upon written request, provide copies of the
18 vouchers to the developer. If the salary, staff support and
19 overhead for a professional are provided by the municipality, the
20 charge to the deposit shall not exceed 200% of the sum of the
21 products resulting from multiplying (1) the hourly base salary of
22 each of the professionals by (2) the number of hours spent by the
23 respective professional on review of the application for
24 development or the developer's improvements, as the case may
25 be. For other professionals the charge to the deposit shall be at
26 the same rate as all other work of the same nature by the
27 professional for the municipality.

28 14. (New section) A municipality shall not require that a
29 maintenance guarantee required pursuant to section 41 of
30 P.L.1975, c.291 (C.40:55D-53) be in cash or that more than 10%
31 of a performance guarantee pursuant to that section be in cash.
32 A developer may, however, provide at his option some or all of a
33 maintenance guarantee in cash, or more than 10% of a
34 performance guarantee in cash.

35 15. (New section) The cost of the installation of
36 improvements for the purposes of section 41 of P.L.1975, c.291
37 (C.40:55D-53) shall be estimated by the municipal engineer based
38 on documented construction costs for public improvements
39 prevailing in the general area of the municipality. The developer
40 may appeal the municipal engineer's estimate to the governing
41 body. The governing body shall decide the appeal within 45 days
42 of receipt of the appeal in writing by the municipal clerk. After
43 the developer posts a guarantee with the municipality based on
44 the 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.

49 16. (New section) The approving authority shall, for the
50 purposes of section 41 of P.L.1975, c.291 (C.40:55D-53), accept a

1 performance guarantee or maintenance guarantee which is an
2 irrevocable letter of credit if it:

3 a. Constitutes an unconditional payment obligation of the
4 issuer running solely to the municipality for an express initial
5 period of time in the amount determined pursuant to section 41
6 of P.L.1975, c.291 (C.40:55D-53);

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

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

10 d. Permits the municipality to draw upon the letter of credit if
11 the obligor fails to furnish another letter of credit which
12 complies with the provisions of this section 30 days or more in
13 advance of the expiration date of the letter of credit or such
14 longer period in advance thereof as is stated in the letter of
15 credit.

16 17. (New section) If an approving authority includes as a
17 condition of approval of an application for development pursuant
18 to P.L.1975, c.291 (C.40:55D-1 et seq.) the installation of street
19 lighting on a dedicated public street connected to a public utility,
20 then upon notification in writing by the developer to the
21 approving authority and governing body of the municipality that
22 (1) the street lighting on a dedicated public street has been
23 installed and accepted for service by the public utility and (2)
24 that certificates of occupancy have been issued for at least 50%
25 of the dwelling units and 50% of the floor area of the
26 nonresidential uses on the dedicated public street or portion
27 thereof indicated by section pursuant to section 29 of P.L.1975,
28 c.291 (C.40:55D-38), the municipality shall, within 30 days
29 following receipt of the notification, make appropriate
30 arrangements with the public utility for, and assume the payment
31 of, the costs of the street lighting on the dedicated public street
32 on a continuing basis. Compliance by the municipality with the
33 provisions of this section shall not be deemed to constitute
34 acceptance of the street by the municipality.

35 18. Section 42 of P.L.1975, c.291 (C.40:55D-54) is amended to
36 read as follows:

37 42. Recording of final approval of major subdivision; filing of
38 all subdivision plats. a. Final approval of a major subdivision
39 shall expire 95 days from the date of signing of the plat unless
40 within such period the plat shall have been duly filed by the
41 developer with the county recording officer. The planning board
42 may for good cause shown extend the period for recording for an
43 additional period not to exceed 190 days from the date of signing
44 of the plat. The planning board may extend the 95-day or
45 190-day period if the developer proves to the reasonable
46 satisfaction of the planning board (1) that the developer was
47 barred or prevented, directly or indirectly, from filing because of
48 delays in obtaining legally required approvals from other
49 governmental or quasi-governmental entities and (2) that the
50 developer applied promptly for and diligently pursued the

1 required approvals. The length of the extension shall be equal to
2 the period of delay caused by the wait for the required approvals,
3 as determined by the planning board. The developer may apply
4 for an extension either before or after the original expiration
5 date.

6 b. No subdivision plat shall be accepted for filing by the
7 county recording officer until it has been approved by the
8 planning board as indicated on the instrument by the signature of
9 the chairman and secretary of the planning board or a certificate
10 has been issued pursuant
11 to sections 35, 38, 44, 48, 54 or 63 of [this act] P.L.1975, c.291
12 [C.40:55D-47, 40:55D-50, 40:55D-56, 40:55D-61, 40:55D-67,
13 40:55D-76]. The signatures of the chairman and secretary of the
14 planning board shall not be affixed until the developer has posted
15 the guarantees required pursuant to section 41 of [this act]
16 P.L.1975, c.291 (C.40:55D-53). If the county recording officer
17 records any plat without such approval, such recording shall be
18 deemed null and void, and upon request of the municipality, the
19 plat shall be expunged from the official records.

20 c. It shall be the duty of the county recording officer to notify
21 the planning board in writing within 7 days of the filing of any
22 plat, identifying such instrument by its title, date of filing, and
23 official number.

24 (cf: P.L.1975, c.291, s.42)

25 19. Section 50 of P.L.1975, c.291 (C.40:55D-63) is amended to
26 read as follows:

27 50. Protest. A protest against any proposed amendment or
28 revision of a zoning ordinance may be filed with the municipal
29 clerk, signed by the owners of 20% or more [either] of the area
30 either (1) of the lots or land included in such proposed change, or
31 (2) of the lots or land extending 200 feet in all directions
32 therefrom inclusive of street space, whether within or without
33 the municipality. Such amendment or revision shall not become
34 effective following the filing of such protest except by the
35 favorable vote of two-thirds of all the members of the governing
36 body of the municipality.

37 (cf: P.L.1975, c.291, s.50)

38 20. (New section) If the board of adjustment lacks a quorum
39 because any of its regular or alternate members is prohibited by
40 section 56 of P.L.1975, c.291 (C.40:55D-69) from acting on a
41 matter due to the member's personal or financial interest
42 therein, Class IV members of the planning board shall be called
43 upon to serve, for that matter only, as temporary members of the
44 board of adjustment. The Class IV members of the planning
45 board shall be called upon to serve in order of seniority of
46 continuous service to the planning board until there are the
47 minimum number of members necessary to constitute a quorum
48 to act upon the matter without any personal or financial interest
49 therein, whether direct or indirect. If a choice has to be made
50 between Class IV members of equal seniority, the chairman of

1 the planning board shall make the choice.
2 21. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
3 read as follows:
4 57. Powers. The board of adjustment shall have the power to:
5 a. Hear and decide appeals where it is alleged by the appellant
6 that there is error in any order, requirement, decision or refusal
7 made by an administrative officer based on or made in the
8 enforcement of the zoning ordinance;
9 b. Hear and decide requests for interpretation of the zoning
10 map or ordinance or for decisions upon other special questions
11 upon which such board is authorized to pass by any zoning or
12 official map ordinance, in accordance with this act;
13 c. (1) Where: (a) by reason of exceptional narrowness,
14 shallowness or shape of a specific piece of property, or (b) by
15 reason of exceptional topographic conditions or physical features
16 uniquely affecting a specific piece of property, or (c) by reason of
17 an extraordinary and exceptional situation uniquely affecting a
18 specific piece of property or the structures lawfully existing
19 thereon, the strict application of any regulation pursuant to
20 article 8 of this act would result in peculiar and exceptional
21 practical difficulties to, or exceptional and undue hardship upon
22 the developer of such property, grant, upon an application or an
23 appeal relating to such property, a variance from such strict
24 application of such regulation so as to relieve such difficulties or
25 hardship; (2) where in an application or appeal relating to a
26 specific piece of property the purposes of this act would be
27 advanced by a deviation from the zoning ordinance requirements
28 and the benefits of the deviation would substantially outweigh
29 any detriment, grant a variance to allow departure from
30 regulations pursuant to article 8 of this act; provided, however,
31 that no variance from those departures enumerated in subsection
32 d. of this section shall be granted under this subsection; and
33 provided further that the proposed development does not require
34 approval by the planning board of a subdivision, site plan or
35 conditional use, in conjunction with which the planning board has
36 power to review a request for a variance pursuant to subsection
37 47 a. of this act; and
38 d. In particular cases and for special reasons, grant a variance
39 to allow departure from regulations pursuant to article 8 of this
40 act to permit: (1) a use or principal structure in a district
41 restricted against such use or principal structure, (2) an expansion
42 of a nonconforming use, (3) deviation from a specification or
43 standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67)
44 pertaining solely to a conditional use, (4) an increase in the
45 permitted floor area ratio as defined in section 3.1 of P.L.1975,
46 c.291 (C.40:55D-4), (5) an increase in the permitted density as
47 defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as
48 applied to the required lot area for a lot or lots for detached one
49 or two dwelling unit buildings, which lot or lots are either an
50 isolated undersized lot or lots resulting from a minor subdivision

1 or (6) a height of a principal structure which exceeds by 10 feet
2 or 10% the maximum height permitted in the district for a
3 principal structure. A variance under this subsection shall be
4 granted only by affirmative vote of at least five members, in the
5 case of a municipal board, or 2/3 of the full authorized
6 membership, in the case of a regional board, pursuant to article
7 10 of this act.

8 If an application for development requests one or more
9 variances but not a variance for a purpose enumerated in
10 subsection d. of this section, the decision on the requested
11 variance or variances shall be rendered under subsection c. of this
12 section.

13 No variance or other relief may be granted under the terms of
14 this section unless such variance or other relief can be granted
15 without substantial detriment to the public good and will not
16 substantially impair the intent and the purpose of the zone plan
17 and zoning ordinance. In respect of any airport hazard areas
18 delineated under the "Air Safety and Hazardous Zoning Act of
19 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other
20 relief may be granted under the terms of this section, permitting
21 the creation or establishment of a nonconforming use which
22 would be prohibited under the standards promulgated pursuant to
23 that act, except upon issuance of a permit by the Commissioner
24 of Transportation. An application under this section may be
25 referred to any appropriate person or agency for its report;
26 provided that such reference shall not extend the period of time
27 within which the zoning board of adjustment shall act.

28 (cf: P.L.1984, c.20, s.12)

29 ¹[22. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to
30 read as follows:

31 5. Exceptions. Any purchase, contract or agreement of the
32 character described in section 4 of this act may be made,
33 negotiated or awarded by the governing body without public
34 advertising for bids and bidding therefor if

35 (1) The subject matter thereof consists of

36 (a) (i) Professional services. The governing body shall in each
37 instance state supporting reasons for its action in the resolution
38 awarding each contract and shall forthwith cause to be printed
39 once, in a newspaper authorized by law to publish its legal
40 advertisements, a brief notice stating the nature, duration,
41 service and amount of the contract, and that the resolution and
42 contract are on file and available for public inspection in the
43 office of the clerk of the county or municipality, or, in the case
44 of a contracting unit created by more than one county or
45 municipality, of the counties or municipalities creating such
46 contracting unit; or (ii) Extraordinary unspecifiable services. The
47 application of this exception shall be construed narrowly in favor
48 of open competitive bidding, where possible, and the Division of
49 Local Government Services is authorized to adopt and promulgate
50 rules and regulations limiting the use of this exception in

- 1 accordance with the intention herein expressed. The governing
2 body shall in each instance state supporting reasons for its action
3 in the resolution awarding each contract and shall forthwith
4 cause to be printed, in the manner set forth in subsection (1) (a)
5 (i) of this section, a brief notice of the award of such contract;
- 6 (b) The doing of any work by employees of the contracting
7 unit;
- 8 (c) The printing of legal briefs, records and appendices to be
9 used in any legal proceeding in which the contracting party may
10 be a party;
- 11 (d) The furnishing of a tax map or maps for the contracting
12 party;
- 13 (e) The purchase of perishable foods as a subsistence supply;
- 14 (f) The supplying of any product or the rendering of any
15 service by a public utility, which is subject to the jurisdiction of
16 the Board of Public Utilities, in accordance with tariffs and
17 schedules of charges made, charged or exacted, filed with said
18 board;
- 19 (g) The acquisition, subject to prior approval of the Attorney
20 General, of special equipment for confidential investigation;
- 21 (h) The printing of bonds and documents necessary to the
22 issuance and sale thereof by a contracting unit;
- 23 (i) Equipment repair service if in the nature of an
24 extraordinary unspecifiable service and necessary parts furnished
25 in connection with such service, which exception shall be in
26 accordance with the requirements for extraordinary unspecifiable
27 services;
- 28 (j) The publishing of legal notices in newspapers as required by
29 law;
- 30 (k) The acquisition of artifacts or other items of unique
31 intrinsic, artistic or historical character;
- 32 (l) Election expenses;
- 33 (m) Insurance, including the purchase of insurance coverage
34 and consultant services, which exception shall be in accordance
35 with the requirements for extraordinary unspecifiable services;
- 36 (n) The doing of any work by handicapped persons employed by
37 a sheltered workshop;
- 38 (o) The provision of any service or the furnishing of materials
39 including those of a commercial nature, attendant upon the
40 operation of a restaurant by any nonprofit, duly incorporated,
41 historical society at or on any historical preservation site;
- 42 (p) Homemaker--home health services performed by
43 voluntary, nonprofit agencies;
- 44 (q) The purchase of materials and services for a law library
45 established pursuant to R.S.40:33-14, including books, periodicals,
46 newspapers, documents, pamphlets, photographs, reproductions,
47 microforms, pictorial or graphic works, copyright and patent
48 materials, maps, charts, globes, sound recordings, slides, films,
49 filmstrips, video and magnetic tapes, and other audiovisual,
50 printed, or published material of a similar nature; necessary

1 binding or rebinding of law library materials; and specialized
2 library services;

3 (r) On-site inspections undertaken by private agencies
4 pursuant to the "State Uniform Construction Code Act"
5 (P.L.1975, c.217; C.52:27D-119 et seq.) and the regulations
6 adopted pursuant thereto;

7 (s) The marketing of recyclable materials recovered through a
8 recycling program, or the marketing of any product intentionally
9 produced or derived from solid waste received at a resource
10 recovery facility or recovered through a resource recovery
11 program, including, but not limited to, refuse-derived fuel,
12 compost materials, methane gas, and other similar products; ~~or~~

13 (t) Emergency medical services provided by a hospital to the
14 residents of a municipality or county, provided that: (a) such
15 exception be allowed only after the governing body determines
16 that the emergency services are available only from one provider;
17 and (b) if the contract is awarded without advertising for bids or
18 bidding the governing body shall in each instance state supporting
19 reasons for its action in a resolution awarding the contract and
20 cause to be printed once in a newspaper authorized by law to
21 publish its legal advertisements a brief notice stating the nature,
22 duration, service, and amount of the contract; and (c) the
23 contract shall be kept on file for public inspection in the office of
24 the clerk of the municipality; or

25 (u) The completion or correction by a municipality of
26 improvements for which a performance guarantee has been
27 provided under section 41 of P.L.1975, c.291 (C.40:55D-53), as
28 long as no public monies are expended.

29 (2) It is to be made or entered into with the United States of
30 America, the State of New Jersey, county or municipality or any
31 board, body, officer, agency or authority thereof and any other
32 state or subdivision thereof.

33 (3) The contracting agent has advertised for bids pursuant to
34 section 4 on two occasions and (a) has received no bids on both
35 occasions in response to its advertisement, or (b) the governing
36 body has rejected such bids on two occasions because the
37 contracting agent has determined that they are not reasonable as
38 to price, on the basis of cost estimates prepared for or by the
39 contracting agent prior to the advertising therefor, or have not
40 been independently arrived at in open competition, or (c) on one
41 occasion no bids were received pursuant to (a) and on one
42 occasion all bids were rejected pursuant to (b), in whatever
43 sequence; any such contract or agreement may then be
44 negotiated and may be awarded upon adoption of a resolution by a
45 two-thirds affirmative vote of the authorized membership of the
46 governing body authorizing such contract or agreement; provided,
47 however, that:

48 (i) A reasonable effort is first made by the contracting agent
49 to determine that the same or equivalent materials or supplies, at
50 a cost which is lower than the negotiated price, are not available

1 from an agency or authority of the United States, the State of
2 New Jersey or of the county in which the contracting unit is
3 located, or any municipality in close proximity to the contracting
4 unit;

5 (ii) The terms, conditions, restrictions and specifications set
6 forth in the negotiated contract or agreement are not
7 substantially different from those which were the subject of
8 competitive bidding pursuant to section 4 of this act; and

9 (iii) Any minor amendment or modification of any of the
10 terms, conditions, restrictions and specifications, which were the
11 subject of competitive bidding pursuant to section 4 of this act,
12 shall be stated in the resolution awarding such contract or
13 agreement; provided further, however, that if on the second
14 occasion the bids received are rejected as unreasonable as to
15 price, the contracting agent shall notify each responsible bidder
16 submitting bids on the second occasion of its intention to
17 negotiate, and afford each such bidder a reasonable opportunity
18 to negotiate, but the governing body shall not award such
19 contract or agreement unless the negotiated price is lower than
20 the lowest rejected bid price submitted on the second occasion by
21 a responsible bidder, is the lowest negotiated price offered by any
22 responsible supplier, and is a reasonable price for such work,
23 materials, supplies or services.

24 Whenever a contracting unit shall determine that a bid was not
25 arrived at independently in open competition pursuant to
26 subsection (3) of this section it shall thereupon notify the county
27 prosecutor of the county in which the contracting unit is located
28 and the Attorney General of the facts upon which its
29 determination is based, and when appropriate, it may institute
30 appropriate proceedings in any State or federal court of
31 competent jurisdiction for a violation of any State or federal
32 antitrust law or laws relating to the unlawful restraint of trade.

33 (cf: P.L.1989, c.159, s.1)]¹

34 ¹[23.] 22.¹ This act shall take effect immediately.

35

36

37

LOCAL GOVERNMENT

38

39

Revises "Municipal Land Use Law."

1 a cost which is lower than the negotiated price, are not available
2 from an agency or authority of the United States, the State of
3 New Jersey or of the county in which the contracting unit is
4 located, or any municipality in close proximity to the contracting
5 unit;

6 (ii) The terms, conditions, restrictions and specifications set
7 forth in the negotiated contract or agreement are not
8 substantially different from those which were the subject of
9 competitive bidding pursuant to section 4 of this act; and

10 (iii) Any minor amendment or modification of any of the
11 terms, conditions, restrictions and specifications, which were the
12 subject of competitive bidding pursuant to section 4 of this act,
13 shall be stated in the resolution awarding such contract or
14 agreement; provided further, however, that if on the second
15 occasion the bids received are rejected as unreasonable as to
16 price, the contracting agent shall notify each responsible bidder
17 submitting bids on the second occasion of its intention to
18 negotiate, and afford each such bidder a reasonable opportunity
19 to negotiate, but the governing body shall not award such
20 contract or agreement unless the negotiated price is lower than
21 the lowest rejected bid price submitted on the second occasion by
22 a responsible bidder, is the lowest negotiated price offered by any
23 responsible supplier, and is a reasonable price for such work,
24 materials, supplies or services.

25 Whenever a contracting unit shall determine that a bid was not
26 arrived at independently in open competition pursuant to
27 subsection (3) of this section it shall thereupon notify the county
28 prosecutor of the county in which the contracting unit is located
29 and the Attorney General of the facts upon which its
30 determination is based, and when appropriate, it may institute
31 appropriate proceedings in any State or federal court of
32 competent jurisdiction for a violation of any State or federal
33 antitrust law or laws relating to the unlawful restraint of trade.

34 (cf: P.L.1989, c.159, s.1)

35 23. This act shall take effect immediately.

36

37

38

SPONSORS' STATEMENT

39

40 This bill amends and supplements the "Municipal Land Use
41 Law," P.L.1975, c.291 (C.40:55D-1 et seq.). It is the result of
42 extensive deliberations by the Municipal Land Use Law Drafting
43 Committee, which was instrumental in preparing the basic draft
44 documents of the 1975 "Municipal Land Use Law," and the 1979,
45 1984 and 1985 comprehensive revisions of that law. The
46 committee has monitored the working of the "Municipal Land Use
47 Law," reviewed reported, as well as some unreported, decisions
48 by the courts on that law, and invited and reviewed the comments

1 of local officials and other concerned citizens on their
2 experiences under the law. The contents of the bill are as follows:

3 Section 1 changes the definition of "maintenance guarantee" in
4 section 3.2 of P.L.1975, c.291 (C.40:55D-5), to include surety
5 bonds, certain letters of credit, and cash.

6 Section 2 changes the definition of "performance guarantee" in
7 section 3.3 of P.L.1975, c.291 (C.40:55D-6), to include surety
8 bonds and certain letters of credit.

9 Section 3 amends section 8 of P.L.1975, c.291 (C.40:55D-17) to
10 clarify that when the municipal governing body votes on an
11 appeal from the approval by the board of adjustment of a "d."
12 variance, the decision of the board of adjustment is affirmed
13 unless a majority of the full, authorized membership of the
14 governing body has voted to reverse, remand to the board, or to
15 impose or alter conditions to, the board's approval of the "d."
16 variance.

17 Section 4 amends section 14 of P.L.1975, c.291 (C.40:55D-23)
18 to permit the appointment of a Class III municipal planning board
19 member when the governing body consists of only three
20 members. A Class III planning board member is a member of the
21 municipal governing body appointed by the municipal governing
22 body. Historically, the reason that the appointment of a Class III
23 municipal planning board member was prohibited when the
24 governing body consisted of only three members, was that appeals
25 of planning board decisions were made to the governing body.
26 Since the "Municipal Land Use Law" no longer provides for this
27 type of appeal, the reason for the prohibition no longer exists.

28 Section 5 establishes a procedure for members of the board of
29 adjustment to serve as planning board members when the planning
30 board would otherwise lack a quorum because of conflicts of
31 interest.

32 Section 6 amends section 25 of P.L.1975, c.291 (C.40:55D-34)
33 to clarify that the board of adjustment lacks jurisdiction to direct
34 the issuance of a permit for a building or structure in the bed of
35 any street or public drainage way, flood control basin or public
36 area reserved as shown on the official map, whenever the
37 planning board has jurisdiction to direct the issuance of the
38 permit as part of its primary jurisdiction over subdivision, site
39 plan or conditional use approval for the same development.

40 Section 7 amends section 27 of P.L.1975, c.291 (C.40:55D-36)
41 to clarify that the board of adjustment lacks jurisdiction to direct
42 the issuance of a permit for a building or structure which does
43 not abut a street which meets the standards of section 26 of
44 P.L.1975, c.291 (C.40:55D-35), whenever the planning board has
45 jurisdiction to direct the issuance of the permit as part of its
46 primary jurisdiction over subdivision, site plan or conditional use
47 approval for the same development.

1 Section 8 amends section 14 of P.L.1979, c.216 (C.40:55D-46.1)
2 to require the planning board to grant an extension of the period
3 of vested rights for minor site plan approval if the developer (1)
4 applies before vested rights expire or within 90 days of the last
5 required governmental approval and (2) proves to the reasonable
6 satisfaction of the planning board that he was prevented from
7 proceeding with the development because of delays in obtaining
8 required approvals from other governmental entities and that he
9 was diligent in pursuing these approvals. The planning board has
10 the power to determine the length of the extension, up to a
11 maximum of one year.

12 Section 9 amends section 35 of P.L.1975, C.291 (C.40:55D-47)
13 to (1) clarify that the time period for filing a minor subdivision
14 begins on the date on which the resolution of municipal approval
15 is adopted; (2) empower the planning board to extend the time
16 period for filing a minor subdivision plat or deed for the length of
17 time which the developer proves that he was unavoidably delayed
18 in obtaining other approvals required for filing; and (3) require an
19 extension of the period of vested rights for minor subdivision
20 approval in the same manner as specified in section 8 in regard to
21 minor site plans.

22 Section 10 amends section 37 of P.L.1975, c.291 (C.40:55D-49)
23 (1) to clarify that the period of vested rights for preliminary
24 approval of a major subdivision or site plan begins on the date on
25 which the planning board adopts the resolution of preliminary
26 approval; (2) to clarify, further, that when the planning board
27 extends the period of preliminary approval for a major subdivision
28 or site plan after the date of expiration of approval, the
29 extension runs from what was otherwise the date of expiration
30 and that the developer may apply for the extension before or
31 after the original expiration date; and (3) to require extension of
32 the period of vested rights for preliminary approval of a major
33 subdivision or site plan in the same manner as specified in section
34 8 in regard to minor site plans and to thereafter allow the
35 developer to apply for additional normal discretionary extensions.

36 Section 11 amends section 40 of P.L.1975, c.291 (C.40:55D-52)
37 regarding final approval of a major site plan or subdivision in a
38 manner similar to the amendments in section 10 of this bill,
39 which regards preliminary approval of a major subdivision on site
40 plans.

41 Section 12 amends section 41 of P.L.1975, c.291 (C.40:55D-53)
42 to (1) exempt from the provisions of the "Local Public Contracts
43 Law" completion by a municipality of improvements when the
44 developer defaults, if no public funds are expended for the
45 completion; (2) provide a clearer procedure for the reduction of
46 the amount of performance guarantees; and (3) limit the
47 maximum amount which the municipality can require the
48 developer to deposit toward the cost of inspection by the

1 municipal engineer of the developer's improvements, to the
2 greater of \$500 or 5% of the cost of these improvements, except
3 for extraordinary circumstances.

4 Section 13 (1) requires the municipality to make the payments
5 to its professionals for services rendered pursuant to municipal
6 review of an application, review and preparation of documents or
7 inspection of a development under the "Municipal Land Use
8 Law;" and (2) provides a procedure for charging municipal
9 expenses for these professional services against a reasonable
10 deposit required by the municipality from an applicant or
11 developer in anticipation of these expenses.

12 Section 14 prohibits a municipality from requiring that a
13 maintenance guarantee be in cash or that more than 10% of a
14 performance guarantee be in cash. These restrictions are deleted
15 from the statutory definitions of "maintenance guarantee" and
16 "performance guarantee" by sections 1 and 2 of the bill. This
17 section also clarifies that a developer may, at his option, post
18 more of his performance and maintenance guarantees in cash
19 than the municipality can demand in cash (as opposed to surety
20 bonds and letters of credit.)

21 Section 15 establishes the way in which the cost of
22 improvements will be determined for the purpose of establishing
23 the amount of performance and maintenance guarantees and for
24 appeals.

25 Section 16 provides standards for a letter of credit to be used
26 as a performance or maintenance guarantee.

27 Section 17 establishes a standard for the transfer from the
28 developer to the municipality of responsibility for the cost of
29 electricity for street lighting.

30 Section 18 amends section 42 of P.L.1975, c.291 (C.40:55D-54)
31 to empower the planning board to extend the time period for
32 filing a major subdivision approval for the length of time which
33 the developer proves that he was unavoidably delayed obtaining
34 other approvals required for filing.

35 Section 19 amends section 50 of P.L.1975, c.291 (C.40:55D-63)
36 to clarify that, for purposes requiring a favorable vote of
37 two-thirds of the members of the governing body for adoption of
38 a zoning change, the signers of the protest against the change
39 must own 20% of the area (1) to be rezoned or (2) of the property
40 within 200 feet.

41 Section 20 establishes a procedure for Class IV planning board
42 members to serve as members of the board of adjustment when
43 the board of adjustment would otherwise lack a quorum because
44 of conflicts of interest.

45 Section 21 amends section 57 of P.L.1975, c.291 (C.40:55D-70)
46 to (1) include permission to exceed the height limit for a principal
47 structure by more than 10 feet or more than 10% beyond the
48 maximum established for the zoning district as a d. variance; and

1 (2) clarify that if no d. variances are involved, the board of
2 adjustment is to base its decision on the standards for c.
3 variances.

4 Section 22 amends section 5 of the "Local Public Contracts
5 Law," P.L.1971, c.198 (C.40A:11-5) to exempt from public
6 bidding requirements the completion or correction by a
7 municipality of improvements for which a performance guarantee
8 has been provided under section 41 of P.L.1975, c.291
9 (C.40:55D-53), as long as no public monies are expended.

10

11

12 LOCAL GOVERNMENT

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14 Revises "Municipal Land Use Law."

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1440

STATE OF NEW JERSEY

DATED: OCTOBER 18, 1990

The Assembly Municipal Government Committee reports favorably Assembly Bill No. 1440.

This bill amends and supplements the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). It is the result of extensive deliberations by the Municipal Land Use Law Drafting Committee, which was instrumental in preparing the basic draft documents of the 1975 "Municipal Land Use Law," and the 1979, 1984 and 1985 comprehensive revisions of that law. The committee has monitored the working of the "Municipal Land Use Law," reviewed both reported and unreported decisions by the courts on that law, and invited and reviewed the comments of local officials and other concerned citizens on their experiences under the law. The contents of the bill are as follows:

Section 1 changes the definition of "maintenance guarantee" in section 3.2 of P.L.1975, c.291 (C.40:55D-5), to include surety bonds, certain letters of credit, and cash.

Section 2 changes the definition of "performance guarantee" in section 3.3 of P.L.1975, c.291 (C.40:55D-6), to include surety bonds and certain letters of credit.

Section 3 amends section 8 of P.L.1975, c.291 (C.40:55D-17) to clarify that when the municipal governing body votes on an appeal from the approval by the board of adjustment of a "d." variance, the decision of the board of adjustment is affirmed unless a majority of the full, authorized membership of the governing body has voted to reverse, remand to the board, or to impose or alter conditions to, the board's approval of the "d." variance.

Section 4 amends section 14 of P.L.1975, c.291 (C.40:55D-23) to permit the appointment of a Class III municipal planning board member when the governing body consists of only three members. A Class III planning board member is a member of the municipal governing body appointed by the municipal governing body. Historically, the reason that the appointment of a Class III municipal planning board member was prohibited when the governing body consisted of only three members, was that appeals of planning board decisions were made to the governing body. Since the "Municipal Land Use Law" no longer provides for this type of appeal, the reason for the prohibition no longer exists.

Section 5 establishes a procedure for members of the board of adjustment to serve as planning board members when the planning board would otherwise lack a quorum because of conflicts of interest.

Section 6 amends section 25 of P.L.1975, c.291 (C.40:55D-34) to clarify that the board of adjustment lacks jurisdiction to direct the


issuance of a permit for a building or structure in the bed of any street or public drainage way, flood control basin or public area reserved as shown on the official map, whenever the planning board has jurisdiction to direct the issuance of the permit as part of its primary jurisdiction over subdivision, site plan or conditional use approval for the same development.

Section 7 amends section 27 of P.L.1975, c.291 (C.40:55D-36) to clarify that the board of adjustment lacks jurisdiction to direct the issuance of a permit for a building or structure which does not abut a street which meets the standards of section 26 of P.L.1975, c.291 (C.40:55D-35), whenever the planning board has jurisdiction to direct the issuance of the permit as part of its primary jurisdiction over subdivision, site plan or conditional use approval for the same development.

Section 8 amends section 14 of P.L.1979, c.216 (C.40:55D-46.1) to require the planning board to grant an extension of the period of vested rights for minor site plan approval if the developer (1) applies before vested rights expire or within 90 days of the last required governmental approval and (2) proves to the reasonable satisfaction of the planning board that he was prevented from proceeding with the development because of delays in obtaining required approvals from other governmental entities and that he was diligent in pursuing these approvals. The planning board has the power to determine the length of the extension, up to a maximum of one year.

Section 9 amends section 35 of P.L.1975, c.291 (C.40:55D-47) to (1) clarify that the time period for filing a minor subdivision begins on the date on which the resolution of municipal approval is adopted; (2) empower the planning board to extend the time period for filing a minor subdivision plat or deed for the length of time which the developer proves that he was unavoidably delayed in obtaining other approvals required for filing; and (3) require an extension of the period of vested rights for minor subdivision approval in the same manner as specified in section 8 in regard to minor site plans.

Section 10 amends section 37 of P.L.1975, c.291 (C.40:55D-49) (1) to clarify that the period of vested rights for preliminary approval of a major subdivision or site plan begins on the date on which the planning board adopts the resolution of preliminary approval; (2) to clarify, further, that when the planning board extends the period of preliminary approval for a major subdivision or site plan after the date of expiration of approval, the extension runs from what was otherwise the date of expiration and that the developer may apply for the extension before or after the original expiration date; and (3) to require extension of the period of vested rights for preliminary approval of a major subdivision or site plan in the same manner as specified in section 8 in regard to minor site plans and to thereafter allow the developer to apply for additional normal discretionary extensions.



Section 11 amends section 40 of P.L.1975, c.291 (C.40:55D-52) regarding final approval of a major site plan or subdivision in a manner similar to the amendments in section 10 of this bill, which regards preliminary approval of a major subdivision on site plans.

Section 12 amends section 41 of P.L.1975, c.291 (C.40:55D-53) to (1) exempt from the provisions of the "Local Public Contracts Law" completion by a municipality of improvements when the developer defaults, if no public funds are expended for the completion; (2) provide a clearer procedure for the reduction of the amount of performance guarantees; and (3) limit the maximum amount which the municipality can require the developer to deposit toward the cost of inspection by the municipal engineer of the developer's improvements, to the greater of \$500 or 5% of the cost of these improvements, except for extraordinary circumstances.

Section 13 (1) requires the municipality to make the payments to its professionals for services rendered pursuant to municipal review of an application, review and preparation of documents or inspection of a development under the "Municipal Land Use Law;" and (2) provides a procedure for charging municipal expenses for these professional services against a reasonable deposit required by the municipality from an applicant or developer in anticipation of these expenses.

Section 14 prohibits a municipality from requiring that a maintenance guarantee be in cash or that more than 10% of a performance guarantee be in cash. These restrictions are deleted from the statutory definitions of "maintenance guarantee" and "performance guarantee" by sections 1 and 2 of the bill. This section also clarifies that a developer may, at his option, post more of his performance and maintenance guarantees in cash than the municipality can demand in cash (as opposed to surety bonds and letters of credit.)

Section 15 establishes the way in which the cost of improvements will be determined for the purpose of establishing the amount of performance and maintenance guarantees and for appeals.

Section 16 provides standards for a letter of credit to be used as a performance or maintenance guarantee.

Section 17 establishes a standard for the transfer from the developer to the municipality of responsibility for the cost of electricity for street lighting.

Section 18 amends section 42 of P.L.1975, c.291 (C.40:55D-54) to empower the planning board to extend the time period for filing a major subdivision approval for the length of time which the developer proves that he was unavoidably delayed obtaining other approvals required for filing.

Section 19 amends section 50 of P.L.1975, c.291 (C.40:55D-63) to clarify that, for purposes requiring a favorable vote of two-thirds of the members of the governing body for adoption of a zoning change, the signers of the protest against the change must own at least 20% of the area to be rezoned or of the property within 200 feet.

Section 20 establishes a procedure for Class IV planning board members to serve as members of the board of adjustment when the board of adjustment would otherwise lack a quorum because of conflicts of interest.

Section 21 amends section 57 of P.L.1975, c.291 (C.40:55D-70) to (1) include permission to exceed the height limit for a principal

structure by more than 10 feet or more than 10% beyond the maximum established for the zoning district as a d. variance; and (2) clarify that if no d. variances are involved, the board of adjustment is to base its decision on the standards for c. variances.

Section 22 amends section 5 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-5) to exempt from public bidding requirements the completion or correction by a municipality of improvements for which a performance guarantee has been provided under section 41 of P.L.1975, c.291 (C.40:55D-53), as long as no public monies are expended.

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE LAND USE MANAGEMENT AND
REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1440

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 1991

The Senate Land Use Management and Regional Affairs Committee reports favorably Assembly Bill No. 1440, with committee amendments.

Assembly Bill No. 1440, as amended by the committee, amends and supplements the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). The bill is the result of extensive deliberations by the Municipal Land Use Law Drafting Committee, which was instrumental in preparing the basic draft documents of the 1975 "Municipal Land Use Law," and the 1979, 1984 and 1985 comprehensive revisions of that law. The committee has monitored the working of the "Municipal Land Use Law," reviewed both reported and unreported decisions by the courts on that law, and invited and reviewed the comments of local officials and other concerned citizens on their experiences under the law. The contents of the bill are as follows:

Section 1 changes the definition of "maintenance guarantee" in section 3.2 of P.L.1975, c.291 (C.40:55D-5), to include surety bonds, certain letters of credit, and cash.

Section 2 changes the definition of "performance guarantee" in section 3.3 of P.L.1975, c.291 (C.40:55D-6), to include surety bonds and certain letters of credit.

Section 3 amends section 8 of P.L.1975, c.291 (C.40:55D-17) to clarify that when the municipal governing body votes on an appeal from the approval by the board of adjustment of a "d." variance, the decision of the board of adjustment is affirmed unless a majority of the full, authorized membership of the governing body has voted to reverse, remand to the board, or to impose or alter conditions to, the board's approval of the "d." variance.

Section 4 amends section 14 of P.L.1975, c.291 (C.40:55D-23) to permit the appointment of a Class III municipal planning board member when the governing body consists of only three members. A Class III planning board member is a member of the municipal governing body appointed by the municipal governing body. Historically, the reason that the appointment of a Class III municipal planning board member was prohibited when the governing body consisted of only three members, was that appeals of planning board decisions were made to the governing body. Since the "Municipal Land Use Law" no longer provides for this type of appeal, the reason for the prohibition no longer exists.

Section 5 establishes a procedure for members of the board of adjustment to serve as planning board members when the planning board would otherwise lack a quorum because of conflicts of interest.

Section 6 amends section 25 of P.L.1975, c.291 (C.40:55D-34) to clarify that the board of adjustment lacks jurisdiction to direct the issuance of a permit for a building or structure in the bed of any street or public drainage way, flood control basin or public area reserved as shown on the official map, whenever the planning board has jurisdiction to direct the issuance of the permit as part of its primary jurisdiction over subdivision, site plan or conditional use approval for the same development.

Section 7 amends section 27 of P.L.1975, c.291 (C.40:55D-36) to clarify that the board of adjustment lacks jurisdiction to direct the issuance of a permit for a building or structure which does not abut a street which meets the standards of section 26 of P.L.1975, c.291 (C.40:55D-35), whenever the planning board has jurisdiction to direct the issuance of the permit as part of its primary jurisdiction over subdivision, site plan or conditional use approval for the same development.

Section 8 amends section 14 of P.L.1979, c.216 (C.40:55D-46.1) to require the planning board to grant an extension of the period of vested rights for minor site plan approval if the developer (1) applies before vested rights expire or within 90 days of the last required governmental approval and (2) proves to the reasonable satisfaction of the planning board that he was prevented from proceeding with the development because of delays in obtaining required approvals from other governmental entities and that he was diligent in pursuing these approvals. The planning board has the power to determine the length of the extension, up to a maximum of one year.

Section 9 amends section 35 of P.L.1975, c.291 (C.40:55D-47) to (1) clarify that the time period for filing a minor subdivision begins on the date on which the resolution of municipal approval is adopted; (2) empower the planning board to extend the time period for filing a minor subdivision plat or deed for the length of time which the developer proves that he was unavoidably delayed in obtaining other approvals required for filing; and (3) require an extension of the period of vested rights for minor subdivision approval in the same manner as specified in section 8 in regard to minor site plans.

Section 10 amends section 37 of P.L.1975, c.291 (C.40:55D-49) (1) to clarify that the period of vested rights for preliminary approval of a major subdivision or site plan begins on the date on which the planning board adopts the resolution of preliminary approval; (2) to clarify, further, that when the planning board extends the period of preliminary approval for a major subdivision or site plan after the date of expiration of approval, the extension runs from what was otherwise the date of expiration and that the developer may apply for the extension before or after the original expiration date; and (3) to require extension of the period of vested rights for preliminary approval of a major subdivision or site plan in the same manner as specified in section 8 in regard to minor site

plans and to thereafter allow the developer to apply for additional normal discretionary extensions.

Section 11 amends section 40 of P.L.1975, c.291 (C.40:55D-52) regarding final approval of a major site plan or subdivision in a manner similar to the amendments in section 10 of this bill, which regards preliminary approval of a major subdivision or site plan.

Section 12 amends section 41 of P.L.1975, c.291 (C.40:55D-53) to (1) provide a clearer procedure for the reduction of the amount of performance guarantees; and (2) limit the maximum amount which the municipality can require the developer to deposit toward the cost of inspection by the municipal engineer of the developer's improvements, to the greater of \$500 or 5% of the cost of these improvements, except for extraordinary circumstances.

Section 13 (1) requires the municipality to make the payments to its professionals for services rendered pursuant to municipal review of an application, review and preparation of documents or inspection of a development under the "Municipal Land Use Law;" and (2) provides a procedure for charging municipal expenses for these professional services against a reasonable deposit required by the municipality from an applicant or developer in anticipation of these expenses.

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Section 21 amends section 57 of P.L.1975, c.291 (C.40:55D-70) to (1) include permission to exceed the height limit for a principal structure by more than 10 feet or more than 10% beyond the maximum established for the zoning district as a d. variance; and (2) clarify that if no d. variances are involved, the board of adjustment is to base its decision on the standards for c. variances.

The committee amended section 12 of the bill and deleted section 22 which would have exempted from the provisions of the "Local Public Contracts Law" funds expended by a municipality for the completion of improvements, for which a performance guarantee has been provided, when the developer defaults and if no public funds are expended for the completion of those improvements.