

40:55D-3

LEGISLATIVE HISTORY CHECKLIST  
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(Public utilities--  
notice of development  
applications--clarify  
under municipal land use)

NJSA: 40:55D-3

LAWS OF: 1991 CHAPTER: 412

BILL NO: S3748

SPONSOR(S) Contillo

DATE INTRODUCED: December 12, 1991

COMMITTEE: ASSEMBLY: ---  
SENATE: Land Use

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: January 10, 1992  
SENATE: January 6, 1992

DATE OF APPROVAL: January 17, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

§§5,8,9  
C.40:55D-12.1  
to  
40:55D-12.3  
§5  
Note to §§6,7  
§6  
C.48:3-17.3a  
§7  
C.48:5A-20.1  
§10  
Note to §§1-9

P.L.1991, CHAPTER 412, approved January 17, 1992

1991 Senate No. 3748

1 AN ACT concerning notification of certain public utilities, cable  
2 television companies and local utilities in connection with  
3 development applications, amending and supplementing  
4 P.L.1975, c.291 and supplementing Title 48 of the Revised  
5 Statutes.

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

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

11 3. ~~For the purposes of this act, unless the context clearly~~  
12 ~~indicates a different meaning:~~

13 The term "shall" indicates a mandatory requirement, and the  
14 term "may" indicates a permissive action.

15 "Administrative officer" means the clerk of the municipality,  
16 unless a different municipal official or officials are designated by  
17 ordinance or statute.

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

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

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

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

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

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

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

39 "Circulation" means systems, structures and physical  
40 improvements for the movement of people, goods, water, air,

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

Matter underlined thus is new matter.

1 sewage or power by such means as streets, highways, railways,  
2 waterways, towers, airways, pipes and conduits, and the handling  
3 of people and goods by such means as terminals, stations,  
4 warehouses, and other storage buildings or transshipment points.

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

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

18 "Conventional" means development other than planned  
19 development.

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

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

28 (cf: P.L.1984, c.20, s.1)

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

31 3.1. "Days" means calendar days.

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

34 "Developer" means the legal or beneficial owner or owners of a  
35 lot or of any land proposed to be included in a proposed  
36 development, including the holder of an option or contract to  
37 purchase, or other person having an enforceable proprietary  
38 interest in such land.

39 "Development" means the division of a parcel of land into two  
40 or more parcels, the construction, reconstruction, conversion,  
41 structural alteration, relocation or enlargement of any building or  
42 other structure, or of any mining excavation or landfill, and any  
43 use or change in the use of any building or other structure, or  
44 land or extension of use of land, for which permission may be  
45 required pursuant to this act.

46 "Development regulation" means a zoning ordinance,  
47 subdivision ordinance, site plan ordinance, official map ordinance  
48 or other municipal regulation of the use and development of land,  
49 or amendment thereto adopted and filed pursuant to this act.

50 "Drainage" means the removal of surface water or  
51 groundwater from land by drains, grading or other means and

1 includes control of runoff during and after construction or  
2 development to minimize erosion and sedimentation, to assure  
3 the adequacy of existing and proposed culverts and bridges, to  
4 induce water recharge into the ground where practical, to lessen  
5 nonpoint pollution, to maintain the integrity of stream channels  
6 for their biological functions as well as for drainage, and the  
7 means necessary for water supply preservation or prevention or  
8 alleviation of flooding.

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

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

13 "Final approval" means the official action of the planning  
14 board taken on a preliminarily approved major subdivision or site  
15 plan, after all conditions, engineering plans and other  
16 requirements have been completed or fulfilled and the required  
17 improvements have been installed or guarantees properly posted  
18 for their completion, or approval conditioned upon the posting of  
19 such guarantees.

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

22 "General development plan" means a comprehensive plan for  
23 the development of a planned development, as provided in section  
24 4 of [this amendatory and supplementary act,] P.L.1987, c.129  
25 (C.40:55D-45.2).

26 "Governing body" means the chief legislative body of the  
27 municipality. In municipalities having a board of public works,  
28 "governing body" means such board.

29 "Historic district" means one or more historic sites and  
30 intervening or surrounding property significantly affecting or  
31 affected by the quality and character of the historic site or sites.

32 "Historic site" means any real property, man-made structure,  
33 natural object or configuration or any portion or group of the  
34 foregoing of historical, archeological, cultural, scenic or  
35 architectural significance.

36 "Interested party" means: (a) in a criminal or quasi-criminal  
37 proceeding, any citizen of the State of New Jersey; and (b) in the  
38 case of a civil proceeding in any court or in an administrative  
39 proceeding before a municipal agency, any person, whether  
40 residing within or without the municipality, whose right to use,  
41 acquire, or enjoy property is or may be affected by any action  
42 taken under this act, or whose rights to use, acquire, or enjoy  
43 property under this act, or under any other law of this State or of  
44 the United States have been denied, violated or infringed by an  
45 action or a failure to act under this act.

46 "Land" includes improvements and fixtures on, above or below  
47 the surface.

48 "Local utility" means any sewerage authority created pursuant  
49 to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1  
50 et seq.); any utilities authority created pursuant to the

1 "municipal and county utilities authority law," P.L.1957, c.183  
2 (C.40:14B-1 et seq.); or any utility, authority, commission,  
3 special district or other corporate entity not regulated by the  
4 Board of Regulatory Commissioners under Title 48 of the Revised  
5 Statutes that provides gas, electricity, heat, power, water or  
6 sewer service to a municipality or the residents thereof;

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

10 (cf: P.L. 1991, c.199, s.1.)

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

13 3.3. "Party immediately concerned" means for purposes of  
14 notice any applicant for development, the owners of the subject  
15 property and all owners of property and government agencies  
16 entitled to notice under section 7.1 of P.L.1975, c.291  
17 (C.40:55D-12).

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

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

29 "Planned development" means planned unit development,  
30 planned unit residential development, residential cluster, planned  
31 commercial development or planned industrial development.

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

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

45 "Planned unit residential development" means an area with a  
46 specified minimum contiguous acreage of 5 acres or more to be  
47 developed as a single entity according to a plan containing one or  
48 more residential clusters, which may include appropriate  
49 commercial, or public or quasi-public uses all primarily for the  
50 benefit of the residential development.

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

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

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

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

14 "Public areas" means (1) public parks, playgrounds, trails, paths  
15 and other recreational areas; (2) other public open spaces; (3)  
16 scenic and historic sites; and (4) sites for schools and other public  
17 buildings and structures.

18 "Public development proposal" means a master plan, capital  
19 improvement program or other proposal for land development  
20 adopted by the appropriate public body, or any amendment  
21 thereto.

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

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

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

37 "Quorum" means the majority of the full authorized  
38 membership of a municipal agency.

39 "Residential cluster" means an area to be developed as a single  
40 entity according to a plan containing residential housing units  
41 which have a common or public open space area as an  
42 appurtenance.

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

46 "Resubdivision" means (1) the further division or relocation of  
47 lot lines of any lot or lots within a subdivision previously made  
48 and approved or recorded according to law or (2) the alteration of  
49 any streets or the establishment of any new streets within any  
50 subdivision previously made and approved or recorded according

1 to law, but does not include conveyances so as to combine  
2 existing lots by deed or other instrument.

3 (cf: P.L.1991, c.256, s.2)

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

6 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of  
7 this section shall be given by the applicant unless a particular  
8 municipal officer is so designated by ordinance; provided that  
9 nothing contained herein shall prevent the applicant from giving  
10 such notice if he so desires. Notice pursuant to subsections a., b.,  
11 d., e., f., g. and h. of this section shall be given at least 10 days  
12 prior to the date of the hearing.

13 a. Public notice of a hearing on an application for development  
14 shall be given, except for (1) conventional site plan review  
15 pursuant to section 34 of [this act] P.L.1975, c.291 (C.40:55D-46),  
16 ~~(2) minor subdivisions pursuant to section 35 of [this act]~~  
17 P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to  
18 section 38 of [this act] P.L.1975, c.291 (C.40:55D-50); provided  
19 that the governing body may by ordinance require public notice  
20 for such categories of site plan review as may be specified by  
21 ordinance; and provided further that public notice shall be given  
22 in the event that relief is requested pursuant to section 47 or 63  
23 of [this act] P.L.1975, c.291 (C.40:55D-60 or C.40:55D-76) as  
24 part of an application for development otherwise excepted herein  
25 from public notice. Public notice shall be given by publication in  
26 the official newspaper of the municipality, if there be one, or in a  
27 newspaper of general circulation in the municipality.

28 b. Notice of a hearing requiring public notice pursuant to  
29 ~~subsection a. of this section~~ shall be given to the owners of all  
30 real property as shown on the current tax duplicates, located in  
31 the State and within 200 feet in all directions of the property  
32 which is the subject of such hearing; provided that this  
33 requirement shall be deemed satisfied by notice to the (1)  
34 condominium association, in the case of any unit owner whose  
35 unit has a unit above or below it, or (2) horizontal property  
36 regime, in the case of any co-owner whose apartment has an  
37 apartment above or below it. Notice shall be given by: (1)  
38 serving a copy thereof on the property owner as shown on the said  
39 current tax duplicate, or his agent in charge of the property, or  
40 (2) mailing a copy thereof by certified mail to the property owner  
41 at his address as shown on the said current tax duplicate.

42 Notice to a partnership owner may be made by service upon  
43 any partner. Notice to a corporate owner may be made by  
44 service upon its president, a vice president, secretary or other  
45 person authorized by appointment or by law to accept service on  
46 behalf of the corporation. Notice to a condominium association,  
47 horizontal property regime, community trust or homeowners'  
48 association, because of its ownership of common elements or  
49 areas located within 200 feet of the property which is the subject  
50 of the hearing, may be made in the same manner as to a

1 corporation without further notice to unit owners, co-owners, or  
2 homeowners on account of such common elements or areas.

3 [Notice of a hearing requiring public notice pursuant to  
4 subsection a. of this section shall be given to public utilities and  
5 cable television companies in accordance with subsection h. of  
6 this section.]

7 ~~c. Upon the written request of an applicant, the administrative~~  
8 ~~officer of a municipality shall, within seven days, make and~~  
9 ~~certify a list from said current tax duplicates of names and~~  
10 ~~addresses of owners to whom the applicant is required to give~~  
11 ~~notice pursuant to subsection b. of this section. In addition, the~~  
12 ~~administrative officer shall include on the list the names,~~  
13 ~~addresses and positions of those persons who, not less than seven~~  
14 ~~days prior to the date on which the applicant requested the list,~~  
15 ~~have registered to receive notice pursuant to subsection h. of this~~  
16 ~~section. The applicant shall be entitled to rely upon the~~  
17 ~~information contained in such list, and failure to give notice to~~  
18 ~~any owner or to any public utility, cable television company, or~~  
19 ~~local utility not on the list shall not invalidate any hearing or~~  
20 ~~proceeding. A sum not to exceed \$0.25 per name, or \$10.00,~~  
21 ~~whichever is greater, may be charged for such list.~~

22 d. Notice of hearings on applications for development  
23 involving property located within 200 feet of an adjoining  
24 municipality shall be given by personal service or certified mail  
25 to the clerk of such municipality.

26 e. Notice shall be given by personal service or certified mail  
27 to the county planning board of a hearing on an application for  
28 development of property adjacent to an existing county road or  
29 proposed road shown on the official county map or on the county  
30 master plan, adjoining other county land or situated within  
31 200 feet of a municipal boundary.

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

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

43 h. [(1)] Notice of hearings on applications for approval of a  
44 major subdivision or a site plan not defined as a minor site plan  
45 under this act requiring public notice pursuant to subsection a. of  
46 this section shall be given [by personal service or certified mail  
47 to the corporate secretary of all public utilities and the general  
48 manager of all cable television companies that own land or any  
49 facility or that possess a right-of-way or easement within  
50 200 feet in all directions of the property which is the subject of



1 such hearing;

2 (2) In addition to any notification requirement otherwise  
3 imposed under this act, an applicant seeking approval of a  
4 development which does not require notice, as provided in  
5 paragraph (1) of this subsection, shall be required to provide  
6 notice, by personal service or certified mail, to the corporate  
7 secretary of any public utility and the general manager of any  
8 cable television company that possesses a right-of-way or  
9 easement situated within the property limits of the property  
10 which is the subject of the application for development approval  
11 under this paragraph], in the case of a public utility, cable  
12 television company or local utility which possesses a  
13 right-of-way or easement within the municipality and which has  
14 registered with the municipality in accordance with section 5 of  
15 P.L. c. (C. ) (pending before the Legislature as this  
16 bill), by (1) serving a copy of the notice on the person whose name  
17 appears on the registration form on behalf of the public utility,  
18 cable television company or local utility or (2) mailing a copy  
19 thereof by certified mail to the person whose name appears on  
20 the registration form at the address shown on that form.

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

25 j. Notice pursuant to subsections d., e., f., g. and h. of this  
26 section shall not be deemed to be required, unless public notice  
27 pursuant to subsection a. and notice pursuant to subsection b. of  
28 this section are required.

29 (cf: P.L.1991, c.245, s.1)

30 5. (New section) a. Every public utility, cable television  
31 company and local utility interested in receiving notice pursuant  
32 to subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12)  
33 may register with any municipality in which the public utility,  
34 cable television company or local utility has a right-of-way or  
35 easement. The registration shall remain in effect until revoked  
36 by the public utility, cable television company, or local utility or  
37 by its successor in interest.

38 b. The administrative officer of every municipality shall adopt  
39 a registration form and shall maintain a record of all public  
40 utilities, cable television companies, and local utilities which  
41 have registered with the municipality pursuant to subsection a. of  
42 this section. The registration form shall include the name of the  
43 public utility, cable television company or local utility and the  
44 name, address and position of the person to whom notice shall be  
45 forwarded, as required pursuant to subsection h. of section 7.1 of  
46 P.L.1975, c.291 (C.40:55D-12). The information contained  
47 therein shall be made available to any applicant, as provided in  
48 subsection c. of section 7.1 of P.L.1975, c.291 (C.40:55D-12).

49 c. Any municipality may impose a registration fee of \$10 on  
50 any public utility, cable television company or local utility which

1 registers to receive notice pursuant to subsection a. of this  
2 section.

3 6. (New section) Within 30 days after the effective date of  
4 this act, the Board of Regulatory Commissioners shall notify the  
5 ~~corporate secretary of every public utility regulated by the board~~  
6 that, in order to receive notice by an applicant pursuant to  
7 subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12), the  
8 public utility shall register with any municipality in which the  
9 utility has a ~~right-of-way or easement~~.

10 7. (New section) Within 30 days after the effective date of  
11 this act, the Board of Regulatory Commissioners shall notify the  
12 ~~general manager of every cable television company~~ that, in order  
13 to receive notice by an applicant pursuant to subsection h. of  
14 section 7.1 of P.L.1975, c.291 (C.40:55D-12), the cable television  
15 company shall register with any municipality in which the cable  
16 television company has a ~~right-of-way or easement~~.

17 8. (New section) Within 30 days after the effective date of  
18 this act, the administrative officer of every municipality shall  
19 notify the ~~corporate secretary of every local utility~~ that, in order  
20 to receive notice by an applicant pursuant to subsection h. of  
21 section 7.1 of P.L.1975, c.291 (C.40:55D-12), the utility shall  
22 register with the ~~municipality or any other municipality in which~~  
23 the utility has a ~~right-of-way or easement~~.

24 9. (New section) Failure to give notice as required pursuant to  
25 ~~P.L.1991, c.245, shall not invalidate any hearing or proceeding~~  
26 held or to be held, or any preliminary or final approval granted or  
27 to be granted, from August 7, 1991 until 75 days following  
28 enactment.

29 10. This act shall take effect on the 30th day following  
30 enactment, except that section 4 shall take effect on the 75th  
31 day following enactment, section 5 shall take effect on the 60th  
32 day following enactment, and section 9 shall take effect  
33 immediately.

34

35

36

#### STATEMENT

37

38 This bill clarifies the requirement that public utilities be  
39 notified prior to hearings on certain applications for development  
40 approval pursuant to the "Municipal Land Use Law," P.L.1975,  
41 c.291 (C.40:55D-1 et seq.).

42 With the enactment of P.L.1991, c.245 on August 7, 1991,  
43 public utilities for the first time were accorded the same rights  
44 as surrounding property owners to be notified of proposed  
45 development plans under the "Municipal Land Use Law," in  
46 connection with facilities, easements and rights-of-way situated  
47 within 200 feet of the proposed development. Because most  
48 municipal tax maps do not contain complete information  
49 regarding the presence of easements and rights-of-way within  
50 municipal boundaries, however, implementation of P.L.1991,

1 c.245 faced seemingly insurmountable difficulties.

2 It is the purpose of this bill to define the types of utilities  
3 which are covered by the notification requirement, to establish  
4 an implementation mechanism which does not prove onerous for  
5 either municipalities or the development community and to  
6 exempt from the law's notice requirements those applications for  
7 development which were acted on by a municipal approving  
8 authority on or after August 7, 1991 until 75 days following  
9 enactment, notwithstanding the fact that utilities were not  
10 properly notified.

11 The bill defines those utilities covered by the notification  
12 requirement as: (1) any public utility regulated under Title 48 of  
13 the Revised Statutes; (2) any cable television company regulated  
14 thereunder; and (3) any local utility. The notice requirement  
15 under the bill applies to hearings on applications for approval of a  
16 major subdivision or a site plan not defined as a minor site plan  
17 under the "Municipal Land Use Law."

18 Local utilities are defined to include all of the sewerage  
19 authorities and municipal and county utilities authorities  
20 established under P.L.1946, c.138 (C.40:14A-1 et seq.) and  
21 P.L.1957, c.183 (C.40:14B-1 et seq.), respectively, and the myriad  
22 of utilities, authorities, commissions, special districts and other  
23 corporate entities not regulated by the Board of Regulatory  
24 Commissioners under Title 48 that provide gas, electricity, heat,  
25 power, water or sewer service to a municipality or its residents.

26 Additionally, the bill requires that those public utilities, cable  
27 television companies and local utilities which are interested in  
28 receiving notice of development applications, register annually  
29 with those municipalities in which they possess a right-of-way or  
30 easement prior to receiving such notice. In order to receive such  
31 notice, the entity is required to have registered at least seven  
32 days prior to the request by the applicant for the certified list of  
33 property owners of the administrative officer. Municipalities are  
34 authorized to charge up to \$10.00 for each registration.

35 ~~The bill provides a mechanism whereby all entities entitled to~~  
36 ~~receive notice are themselves to be notified of their option to~~  
37 ~~register. This responsibility is assigned to the Board of~~  
38 ~~Regulatory Commissioners in the case of public utilities and~~  
39 ~~cable television companies, and to the administrative officer of~~  
40 ~~each municipality in the case of local utilities.~~

41 Finally, the bill provides that failure to give notice, as required  
42 pursuant to P.L.1991, c.245, shall not invalidate any hearing or  
43 proceeding held or to be held, or any preliminary or final approval  
44 granted or to be granted, from August 7, 1991 until 75 days  
45 following the date of enactment.

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#### LAND USE

49

50 Clarifies notification of utilities and CATV companies under  
51 "Municipal Land Use Law."

STATE OF NEW JERSEY

INTRODUCED DECEMBER 12, 1991

By Senator CONTILLO

1 AN ACT concerning notification of certain public utilities, cable  
2 television companies and local utilities in connection with  
3 development applications, amending and supplementing  
4 P.L.1975, c.291 and supplementing Title 48 of the Revised  
5 Statutes.

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

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

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

13 The term "shall" indicates a mandatory requirement, and the  
14 term "may" indicates a permissive action.

15 "Administrative officer" means the clerk of the municipality,  
16 unless a different municipal official or officials are designated by  
17 ordinance or statute.

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

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

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

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

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

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

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

39 "Circulation" means systems, structures and physical  
40 improvements for the movement of people, goods, water, air,  
41 sewage or power by such means as streets, highways, railways,

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

Matter underlined thus is new matter.

1 waterways, towers, airways, pipes and conduits, and the handling  
2 of people and goods by such means as terminals, stations,  
3 warehouses, and other storage buildings or transshipment points.

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

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

17 "Conventional" means development other than planned  
18 development.

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

24 "County planning board" means the county planning board, as  
25 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the  
26 county in which the land or development is located.  
27 (cf: P.L.1984, c.20, s.1)

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

30 3.1. "Days" means calendar days.

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

33 "Developer" means the legal or beneficial owner or owners of a  
34 lot or of any land proposed to be included in a proposed  
35 development, including the holder of an option or contract to  
36 purchase, or other person having an enforceable proprietary  
37 interest in such land.

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

45 "Development regulation" means a zoning ordinance,  
46 subdivision ordinance, site plan ordinance, official map ordinance  
47 or other municipal regulation of the use and development of land,  
48 or amendment thereto adopted and filed pursuant to this act.

49 "Drainage" means the removal of surface water or  
50 groundwater from land by drains, grading or other means and

1 includes control of runoff during and after construction or  
2 development to minimize erosion and sedimentation, to assure  
3 the adequacy of existing and proposed culverts and bridges, to  
4 induce water recharge into the ground where practical, to lessen  
5 nonpoint pollution, to maintain the integrity of stream channels  
6 for their biological functions as well as for drainage, and the  
7 means necessary for water supply preservation or prevention or  
8 alleviation of flooding.

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

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

13 "Final approval" means the official action of the planning  
14 board taken on a preliminarily approved major subdivision or site  
15 plan, after all conditions, engineering plans and other  
16 requirements have been completed or fulfilled and the required  
17 improvements have been installed or guarantees properly posted  
18 for their completion, or approval conditioned upon the posting of  
19 such guarantees.

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

22 "General development plan" means a comprehensive plan for  
23 the development of a planned development, as provided in section  
24 4 of [this amendatory and supplementary act,] P.L.1987, c.129  
25 (C.40:55D-45.2).

26 "Governing body" means the chief legislative body of the  
27 municipality. In municipalities having a board of public works,  
28 "governing body" means such board.

29 "Historic district" means one or more historic sites and  
30 intervening or surrounding property significantly affecting or  
31 affected by the quality and character of the historic site or sites.

32 "Historic site" means any real property, man-made structure,  
33 natural object or configuration or any portion or group of the  
34 foregoing of historical, archeological, cultural, scenic or  
35 architectural significance.

36 "Interested party" means: (a) in a criminal or quasi-criminal  
37 proceeding, any citizen of the State of New Jersey; and (b) in the  
38 case of a civil proceeding in any court or in an administrative  
39 proceeding before a municipal agency, any person, whether  
40 residing within or without the municipality, whose right to use,  
41 acquire, or enjoy property is or may be affected by any action  
42 taken under this act, or whose rights to use, acquire, or enjoy  
43 property under this act, or under any other law of this State or of  
44 the United States have been denied, violated or infringed by an  
45 action or a failure to act under this act.

46 "Land" includes improvements and fixtures on, above or below  
47 the surface.

48 "Local utility" means any sewerage authority created pursuant  
49 to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1  
50 et seq.); any utilities authority created pursuant to the

1 "municipal and county utilities authority law," P.L.1957, c.183  
2 (C.40:14B-1 et seq.); or any utility, authority, commission,  
3 special district or other corporate entity not regulated by the  
4 Board of Regulatory Commissioners under Title 48 of the Revised  
5 Statutes that provides gas, electricity, heat, power, water or  
6 sewer service to a municipality or the residents thereof;

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

10 (cf: P.L. 1991, c.199, s.1.)

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

13 3.3. "Party immediately concerned" means for purposes of  
14 notice any applicant for development, the owners of the subject  
15 property and all owners of property and government agencies  
16 entitled to notice under section 7.1 of P.L.1975, c.291  
17 (C.40:55D-12).

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

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

29 "Planned development" means planned unit development,  
30 planned unit residential development, residential cluster, planned  
31 commercial development or planned industrial development.

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

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

45 "Planned unit residential development" means an area with a  
46 specified minimum contiguous acreage of 5 acres or more to be  
47 developed as a single entity according to a plan containing one or  
48 more residential clusters, which may include appropriate  
49 commercial, or public or quasi-public uses all primarily for the  
50 benefit of the residential development.

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

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

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

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

14 "Public areas" means (1) public parks, playgrounds, trails, paths  
15 and other recreational areas; (2) other public open spaces; (3)  
16 scenic and historic sites; and (4) sites for schools and other public  
17 buildings and structures.

18 "Public development proposal" means a master plan, capital  
19 improvement program or other proposal for land development  
20 adopted by the appropriate public body, or any amendment  
21 thereto.

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

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

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

37 "Quorum" means the majority of the full authorized  
38 membership of a municipal agency.

39 "Residential cluster" means an area to be developed as a single  
40 entity according to a plan containing residential housing units  
41 which have a common or public open space area as an  
42 appurtenance.

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

46 "Resubdivision" means (1) the further division or relocation of  
47 lot lines of any lot or lots within a subdivision previously made  
48 and approved or recorded according to law or (2) the alteration of  
49 any streets or the establishment of any new streets within any  
50 subdivision previously made and approved or recorded according



1 to law, but does not include conveyances so as to combine  
2 existing lots by deed or other instrument.  
3 (cf: P.L.1991, c.256, s.2)

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

6 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of  
7 ~~this section shall be given by the applicant unless a particular~~  
8 ~~municipal officer is so designated by ordinance; provided that~~  
9 nothing contained herein shall prevent the applicant from giving  
10 such notice if he so desires. Notice pursuant to subsections a., b.,  
11 d., e., f., g. and h. of this section shall be given at least 10 days  
12 prior to the date of the hearing.

13 a. Public notice of a hearing on an application for development  
14 shall be given, except for (1) conventional site plan review  
15 pursuant to section 34 of [this act] P.L.1975, c.291 (C.40:55D-46),  
16 (2) minor subdivisions pursuant to section 35 of [this act]  
17 P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to  
18 section 38 of [this act] P.L.1975, c.291 (C.40:55D-50); provided  
19 that the governing body may by ordinance require public notice  
20 for such categories of site plan review as may be specified by  
21 ordinance; and ~~provided further that public notice shall be given~~  
22 ~~in the event that relief is requested pursuant to section 47 or 63~~  
23 ~~of [this act] P.L.1975, c.291 (C.40:55D-60 or C.40:55D-76) as~~  
24 ~~part of an application for development otherwise excepted herein~~  
25 ~~from public notice. Public notice shall be given by publication in~~  
26 ~~the official newspaper of the municipality, if there be one, or in a~~  
27 ~~newspaper of general circulation in the municipality.~~

28 b. Notice of a hearing requiring public notice pursuant to  
29 subsection a. of this section shall be given to the owners of all  
30 real property as shown on the current tax duplicates, located in  
31 the State and within 200 feet in all directions of the property  
32 which is the subject of such hearing; provided that this  
33 requirement shall be deemed satisfied by notice to the (1)  
34 condominium association, in the case of any unit owner whose  
35 unit has a unit above or below it, or (2) horizontal property  
36 regime, in the case of any co-owner whose apartment has an  
37 apartment above or below it. Notice shall be given by: (1)  
38 serving a copy thereof on the property owner as shown on the said  
39 current tax duplicate, or his agent in charge of the property, or  
40 (2) mailing a copy thereof by certified mail to the property owner  
41 at his address as shown on the said current tax duplicate.

42 Notice to a partnership owner may be made by service upon  
43 any partner. Notice to a corporate owner may be made by  
44 service upon its president, a vice president, secretary or other  
45 person authorized by appointment or by law to accept service on  
46 behalf of the corporation. Notice to a condominium association,  
47 horizontal property regime, community trust or homeowners'  
48 association, because of its ownership of common elements or  
49 areas located within 200 feet of the property which is the subject  
50 of the hearing, may be made in the same manner as to a

1 corporation without further notice to unit owners, co-owners, or  
2 homeowners on account of such common elements or areas.

3 [Notice of a hearing requiring public notice pursuant to  
4 subsection a. of this section shall be given to public utilities and  
5 cable television companies in accordance with subsection h. of  
6 this section.]

7 c. Upon the written request of an applicant, the administrative  
8 officer of a municipality shall, within seven days, ~~make and~~  
9 certify a list from said current tax duplicates of names and  
10 addresses of owners to whom the applicant is required to give  
11 notice pursuant to subsection b. of this section. In addition, the  
12 administrative officer shall include on the list the names,  
13 addresses and positions of those persons who, not less than seven  
14 days prior to the date on which the applicant requested the list,  
15 have registered to receive notice pursuant to subsection h. of this  
16 section. The applicant shall be entitled to rely upon the  
17 information contained in such list, and failure to give notice to  
18 any owner or to any public utility, cable television company, or  
19 local utility not on the list shall not invalidate any hearing or  
20 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,  
21 whichever is greater, may be charged for such list.

22 d. Notice of hearings on applications for development  
23 involving property located within 200 feet of an adjoining  
24 municipality shall be given by personal service or certified mail  
25 to the clerk of such municipality.

26 e. Notice shall be given by personal service or certified mail  
27 to the county planning board of a hearing on an application for  
28 development of property adjacent to an existing county road or  
29 proposed road shown on the official county map or on the county  
30 master plan, adjoining other county land or situated within  
31 200 feet of a municipal boundary.

32 f. ~~Notice shall be given by personal service or certified mail to~~  
33 ~~the Commissioner of Transportation of a hearing on an~~  
34 ~~application for development of property adjacent to a State~~  
35 ~~highway.~~

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

43 h. ~~[(1)]~~ Notice of hearings on applications for approval of a  
44 major subdivision or a site plan not defined as a minor site plan  
45 under this act requiring public notice pursuant to subsection a. of  
46 this section shall be given [by personal service or certified mail  
47 to the corporate secretary of all public utilities and the general  
48 manager of all cable television companies that own land or any  
49 facility or that possess a right-of-way or easement within  
50 200 feet in all directions of the property which is the subject of

1 such hearing;

2 (2) In addition to any notification requirement otherwise  
3 imposed under this act, an applicant seeking approval of a  
4 development which does not require notice, as provided in  
5 paragraph (1) of this subsection, shall be required to provide  
6 notice, by personal service or certified mail, to the corporate  
7 secretary of any public utility and the general manager of any  
8 cable television company that possesses a right-of-way or  
9 easement situated within the property limits of the property  
10 which is the subject of the application for development approval  
11 under this paragraph] , in the case of a public utility, cable  
12 television company or local utility which possesses a  
13 right-of-way or easement within the municipality and which has  
14 registered with the municipality in accordance with section 5 of  
15 P.L. c. (C. ) (pending before the Legislature as this  
16 bill), by (1) serving a copy of the notice on the person whose name  
17 appears on the registration form on behalf of the public utility,  
18 cable television company or local utility or (2) mailing a copy  
19 thereof by certified mail to the person whose name appears on  
20 the registration form at the address shown on that form.

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

25 j. Notice pursuant to subsections d, e., f., g. and h. of this  
26 section shall not be deemed to be required, unless public notice  
27 pursuant to subsection a. and notice pursuant to subsection b. of  
28 this section are required.

29 (cf: P.L.1991, c.245, s.1)

30 5. (New section) a. Every public utility, cable television  
31 company and local utility interested in receiving notice pursuant  
32 to subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12)  
33 may register with any municipality in which the public utility,  
34 cable television company or local utility has a right-of-way or  
35 easement. The registration shall remain in effect until revoked  
36 by the public utility, cable television company, or local utility or  
37 by its successor in interest.

38 b. The administrative officer of every municipality shall adopt  
39 a registration form and shall maintain a record of all public  
40 utilities, cable television companies, and local utilities which  
41 have registered with the municipality pursuant to subsection a. of  
42 this section. The registration form shall include the name of the  
43 public utility, cable television company or local utility and the  
44 name, address and position of the person to whom notice shall be  
45 forwarded, as required pursuant to subsection h. of section 7.1 of  
46 P.L.1975, c.291 (C.40:55D-12). The information contained  
47 therein shall be made available to any applicant, as provided in  
48 subsection c. of section 7.1 of P.L.1975, c.291 (C.40:55D-12).

49 c. Any municipality may impose a registration fee of \$10 on  
50 any public utility, cable television company or local utility which

1 registers to receive notice pursuant to subsection a. of this  
2 section.

3 6. (New section) Within 30 days after the effective date of  
4 this act, the Board of Regulatory Commissioners shall notify the  
5 corporate secretary of every public utility regulated by the board  
6 that, in order to receive notice by an applicant pursuant to  
7 subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12), the  
8 public utility shall register with any municipality in which the  
9 utility has a right-of-way or easement.

10 7. (New section) Within 30 days after the effective date of  
11 this act, the Board of Regulatory Commissioners shall notify the  
12 general manager of every cable television company that, in order  
13 to receive notice by an applicant pursuant to subsection h. of  
14 section 7.1 of P.L.1975, c.291 (C.40:55D-12), the cable television  
15 company shall register with any municipality in which the cable  
16 television company has a right-of-way or easement.

17 8. (New section) Within 30 days after the effective date of  
18 this act, the administrative officer of every municipality shall  
19 notify the corporate secretary of every local utility that, in order  
20 to receive notice by an applicant pursuant to subsection h. of  
21 section 7.1 of P.L.1975, c.291 (C.40:55D-12), the utility shall  
22 register with the municipality or any other municipality in which  
23 the utility has a right-of-way or easement.

24 9. (New section) Failure to give notice as required pursuant to  
25 P.L.1991, c.245, shall not invalidate any hearing or proceeding  
26 held or to be held, or any preliminary or final approval granted or  
27 to be granted, from August 7, 1991 until 75 days following  
28 enactment.

29 10. This act shall take effect on the 30th day following  
30 enactment, except that section 4 shall take effect on the 75th  
31 day following enactment, section 5 shall take effect on the 60th  
32 day following enactment, and section 9 shall take effect  
33 immediately.

34

35

#### 36 STATEMENT

37

38 This bill clarifies the requirement that public utilities be  
39 notified prior to hearings on certain applications for development  
40 approval pursuant to the "Municipal Land Use Law," P.L.1975,  
41 c.291 (C.40:55D-1 et seq.).

42 With the enactment of P.L.1991, c.245 on August 7, 1991,  
43 public utilities for the first time were accorded the same rights  
44 as surrounding property owners, to be notified of proposed  
45 development plans under the "Municipal Land Use Law," in  
46 connection with facilities, easements and rights-of-way situated  
47 within 200 feet of the proposed development. Because most  
48 municipal tax maps do not contain complete information  
49 regarding the presence of easements and rights-of-way within  
50 municipal boundaries, however, implementation of P.L.1991,

1 c.245 faced seemingly insurmountable difficulties.

2 It is the purpose of this bill to define the types of utilities  
3 which are covered by the notification requirement, to establish  
4 an implementation mechanism which does not prove onerous for  
5 either municipalities or the development community and to  
6 exempt from the law's notice requirements those applications for  
7 development which were acted on by a municipal approving  
8 authority on or after August 7, 1991 until 75 days following  
9 enactment, notwithstanding the fact that utilities were not  
10 properly notified.

11 The bill defines those utilities covered by the notification  
12 requirement as: (1) any public utility regulated under Title 48 of  
13 the Revised Statutes; (2) any cable television company regulated  
14 thereunder; and (3) any local utility. The notice requirement  
15 under the bill applies to hearings on applications for approval of a  
16 major subdivision or a site plan not defined as a minor site plan  
17 under the "Municipal Land Use Law."

18 Local utilities are defined to include all of the sewerage  
19 authorities and municipal and county utilities authorities  
20 established under P.L.1946, c.138 (C.40:14A-1 et seq.) and  
21 P.L.1957, c.183 (C.40:14B-1 et seq.), respectively, and the myriad  
22 of utilities, authorities, commissions, special districts and other  
23 corporate entities not regulated by the Board of Regulatory  
24 Commissioners under Title 48 that provide gas, electricity, heat,  
25 power, water or sewer service to a municipality or its residents.

26 Additionally, the bill requires that those public utilities, cable  
27 television companies and local utilities which are interested in  
28 receiving notice of development applications, register annually  
29 with those municipalities in which they possess a right-of-way or  
30 easement prior to receiving such notice. In order to receive such  
31 notice, the entity is required to have registered at least seven  
32 days prior to the request by the applicant for the certified list of  
33 property owners of the administrative officer. Municipalities are  
34 authorized to charge up to \$10.00 for each registration.

35 The bill provides a mechanism whereby all entities entitled to  
36 receive notice are themselves to be notified of their option to  
37 register. This responsibility is assigned to the Board of  
38 Regulatory Commissioners in the case of public utilities and  
39 cable television companies, and to the administrative officer of  
40 each municipality in the case of local utilities.

41 Finally, the bill provides that failure to give notice, as required  
42 pursuant to P.L.1991, c.245, shall not invalidate any hearing or  
43 proceeding held or to be held, or any preliminary or final approval  
44 granted or to be granted, from August 7, 1991 until 75 days  
45 following the date of enactment.

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48

#### LAND USE

49

50 Clarifies notification of utilities and CATV companies under  
51 "Municipal Land Use Law."

SENATE LAND USE MANAGEMENT AND  
REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 3748

STATE OF NEW JERSEY

DATED: DECEMBER 9, 1991

The Senate Land Use Management and Regional Affairs Committee favorably reports Senate Bill No. 3748.

Senate Bill No. 3748 clarifies the requirement that public utilities be notified prior to hearings on certain applications for development approval pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

With the enactment of P.L.1991, c.245 on August 7, 1991, public utilities for the first time were accorded the same rights as surrounding property owners to be notified of proposed development plans under the "Municipal Land Use Law," in connection with facilities, easements and rights-of-way situated within 200 feet of the proposed development. Because most municipal tax maps do not contain complete information regarding the presence of easements and rights-of-way within municipal boundaries, however, implementation of P.L.1991, c.245 faced seemingly insurmountable difficulties.

It is the purpose of this bill to define the types of utilities which are covered by the notification requirement, to establish an implementation mechanism which does not prove onerous for either municipalities or the development community and to exempt from the law's notice requirements those applications for development which were acted on by a municipal approving authority on or after August 7, 1991 until 75 days following enactment, notwithstanding the fact that utilities were not properly notified.

The bill defines those utilities covered by the notification requirement as: (1) any public utility regulated under Title 48 of the Revised Statutes; (2) any cable television company regulated thereunder; and (3) any local utility. The notice requirement under the bill applies to hearings on applications for approval of a major subdivision or a site plan not defined as a minor site plan under the "Municipal Land Use Law."

Local utilities are defined to include all of the sewerage authorities and municipal and county utilities authorities established under C.40:14A-1 et seq. and C.40:14B-1 et seq., respectively, and the myriad of utilities, authorities, commissions, special districts and other corporate entities not regulated by the Board of Public Utilities under Title 48 that provide gas, electricity, heat, power, water or sewer service to a municipality or its residents.

Additionally, the bill requires that those public utilities, cable television companies and local utilities which are interested in receiving notice of development applications register annually with

those municipalities in which they possess a right-of-way or easement prior to receiving such notice. In order to receive such notice, the entity is required to have registered at least seven days prior to the request by the applicant for the certified list of property owners of the administrative officer. Municipalities are authorized to charge up to \$10.00 for each registration.

The bill provides a mechanism whereby all entities entitled to receive notice are themselves to be notified of their option to register. This responsibility is assigned to the Board of Regulatory Commissioners in the case of public utilities and cable television companies, and to the administrative officer of each municipality in the case of local utilities.

Finally, the bill provides that failure to give notice, as required pursuant to P.L.1991, c.245, shall not invalidate any hearing or proceeding held or to be held, or any preliminary or final approval granted or to be granted, from August 7, 1991 until 75 days following the date of enactment.