

**ASSEMBLY, No. 4**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning affordable housing, including administration  
2 and municipal obligations, amending, supplementing, and  
3 repealing various parts of the statutory law, and making an  
4 appropriation.

5

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

8

9 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10 read as follows:

11 2. The Legislature finds that:

12 a. The New Jersey Supreme Court, through its rulings in  
13 **【South】** Southern Burlington County NAACP v. Mount Laurel, 67  
14 N.J. 151 (1975) and **【South】** Southern Burlington County NAACP  
15 v. Mount Laurel, 92 N.J. 158 (1983), has determined that every  
16 municipality in a growth area has a constitutional obligation to  
17 provide through its land use regulations a realistic opportunity for a  
18 fair share of its region's present and prospective needs for housing  
19 for **【low and moderate income】** low- and moderate-income  
20 families.

21 b. In the second Mount Laurel ruling, the Supreme Court stated  
22 that the determination of the methods for satisfying this  
23 constitutional obligation "is better left to the Legislature," that the  
24 court has "always preferred legislative to judicial action in their  
25 field," and that the judicial role in upholding the Mount Laurel  
26 doctrine "could decrease as a result of legislative and executive  
27 action."

28 c. The interest of all citizens, including **【low and moderate**  
29 **income】** low- and moderate-income families in need of affordable  
30 housing, and the needs of the workforce, would be best served by a  
31 comprehensive planning and implementation response to this  
32 constitutional obligation.

33 d. There are a number of essential ingredients to a  
34 comprehensive planning and implementation response, including  
35 the establishment of reasonable fair share housing guidelines and  
36 standards, the initial determination of fair share by officials at the  
37 municipal level and the preparation of a municipal housing element,  
38 State review of the local fair share study and housing element, and  
39 continuous State funding for **【low and moderate income】** low- and  
40 moderate-income housing to replace the federal housing subsidy  
41 programs which have been almost completely eliminated.

42 e. The State can maximize the number of **【low and moderate**  
43 **income】** low- and moderate-income units provided in New Jersey  
44 by allowing its municipalities to adopt appropriate phasing  
45 schedules for meeting their fair share, so long as the municipalities

**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 permit a timely achievement of an appropriate fair share of the  
2 regional need for **low and moderate income** low- and moderate-  
3 income housing as required by the Mt. Laurel I and II opinions and  
4 other relevant court decisions.

5 f. The State can also maximize the number of **low and**  
6 **moderate income** low- and moderate-income units by creating new  
7 affordable housing and by rehabilitating existing, but substandard,  
8 housing in the State. Because the Legislature has determined,  
9 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no  
10 longer appropriate or in harmony with the Mount Laurel doctrine to  
11 permit the transfer of the fair share obligations among  
12 municipalities within a housing region, it is necessary and  
13 appropriate to create a new program to create new affordable  
14 housing and to foster the rehabilitation of existing, but substandard,  
15 housing.

16 g. Since the urban areas are vitally important to the State,  
17 construction, conversion and rehabilitation of housing in our urban  
18 centers should be encouraged. However, the provision of housing  
19 in urban areas must be balanced with the need to provide housing  
20 throughout the State for the free mobility of citizens.

21 h. The Supreme Court of New Jersey in its Mount Laurel  
22 decisions demands that municipal land use regulations affirmatively  
23 afford a **reasonable** realistic opportunity for a variety and choice  
24 of housing including low and moderate cost housing, to meet the  
25 needs of people desiring to live there. While provision for the  
26 actual construction of that housing by municipalities is not required,  
27 they are encouraged but not mandated to expend their own  
28 resources to help provide **low and moderate income** low- and  
29 moderate-income housing.

30 i. **Certain amendments to the enabling act of the Council on**  
31 **Affordable Housing are necessary to provide guidance to the**  
32 **council to ensure consistency with the legislative intent, while at the**  
33 **same time clarifying the limitations of the council in its rulemaking.**  
34 **Although the court has remarked in several decisions that the**  
35 **Legislature has granted the council considerable deference in its**  
36 **rulemaking, the Legislature retains its power and obligation to**  
37 **clarify and amend the enabling act from which the council derives**  
38 **its rulemaking power, from time to time, in order to better guide the**  
39 **council.] (Deleted by amendment, P.L. , c. ) (pending before the**  
40 **Legislature as this bill**)

41 j. The Legislature finds that the use of regional contribution  
42 agreements, which permits municipalities to transfer a certain  
43 portion of their fair share housing obligation outside of the  
44 municipal borders, should no longer be utilized as a mechanism for  
45 the creation of affordable housing **by the council**.

46 k. The Legislature finds that the role of the Council on  
47 Affordable Housing, as intended in the original enactment of the

1 "Fair Housing Act," has not developed in practice as was intended  
2 in the legislation.

3 l. The council's inability to function ultimately led the Supreme  
4 Court in 2015 to order the temporary dissolution of the requirement  
5 that administrative remedies be exhausted prior to resolving  
6 affordable housing disputes before the court, and allowed the courts  
7 to resume their role as the forum of first resort for evaluating  
8 municipal compliance with Mount Laurel obligations pursuant to  
9 guidelines laid out by the Supreme Court's order.

10 m. The Legislature finds that the council's inability to function  
11 led to a "gap period" that frustrated the intent of the Legislature and  
12 compliance with constitutional and statutory obligations, and that it  
13 is necessary to establish definitive deadlines for municipal action  
14 and any challenges to those actions to avoid such a "gap period"  
15 from being repeated in the future.

16 n. The Legislature finds that although the court-led system that  
17 has developed since 2015 has resulted in a significant number of  
18 settlement agreements and increased production of affordable  
19 housing, the system could operate more expeditiously to produce  
20 affordable housing, and at a lower cost to all parties, if appropriate  
21 standards are established by the Legislature to be applied  
22 throughout the State including more clarity on calculation on fair  
23 share affordable housing obligations using transparent and  
24 established data sources to eliminate the lengthy and costly  
25 processes of determining those obligations that have characterized  
26 both the Council on Affordable Housing and court-led system.

27 o. The Legislature determines that, considering the unique  
28 history of the "Fair Housing Act," the Council on Affordable  
29 Housing shall be abolished, and that, pursuant to the formulas and  
30 process established pursuant to sections 6 and 7 of P.L. , c. (C.  
31 and C. ) (pending before the Legislature as this bill), a  
32 municipality shall be authorized to seek approval of its fair share  
33 affordable housing obligation, adopted pursuant to binding  
34 resolution and then filed with the court, with the guidance of  
35 calculations published by the Department of Community Affairs,  
36 but that advocates for the low- and moderate-income households of  
37 the State shall be provided with an opportunity to contest the  
38 municipal determination.

39 p. The Legislature finds that the population of persons aged 65  
40 years and older in the State has grown from approximately 13  
41 percent in 1990, to 17 percent in 2021, and that such growth, in  
42 conjunction with expected future growth, makes it appropriate for  
43 the Legislature to continue to allow up to 25 percent of the units  
44 towards a municipality's prospective affordable housing obligation  
45 to be satisfied through the creation of age-restricted housing.

46 (cf: P.L.2008, c.46, s.4)

- 1       2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
2 read as follows:
- 3       4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):
- 4       a. "Council" means the Council on Affordable Housing  
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall  
6 have primary jurisdiction for the administration of housing  
7 obligations in accordance with sound regional planning  
8 considerations in this State**】** abolished pursuant to section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).
- 10       b. "Housing region" means a geographic area **【**of not less than  
11 two nor more than four contiguous, whole counties which exhibit  
12 significant social, economic and income similarities, and which  
13 constitute to the greatest extent practicable the primary metropolitan  
14 statistical areas as last defined by the United States Census Bureau  
15 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**  
16 established pursuant to subsection b. of section 6 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill).
- 18       c. **【**"Low income" "Low-income" housing means housing  
19 affordable according to federal Department of Housing and Urban  
20 Development or other recognized standards for home ownership  
21 and rental costs and occupied or reserved for occupancy by  
22 households with a gross household income equal to 50 percent or  
23 less of the median gross household income for households of the  
24 same size within the housing region in which the housing is located.
- 25       d. **【**"Moderate income" "Moderate-income" housing means  
26 housing affordable according to federal Department of Housing and  
27 Urban Development or other recognized standards for home  
28 ownership and rental costs and occupied or reserved for occupancy  
29 by households with a gross household income equal to more than 50  
30 **【**%**】** percent but less than 80 percent of the median gross household  
31 income for households of the same size within the housing region in  
32 which the housing is located.
- 33       e. **【**"Resolution of participation" means a resolution adopted by  
34 a municipality in which the municipality chooses to prepare a fair  
35 share plan and housing element in accordance with P.L.1985, c.222  
36 (C.52:27D-301 et al.)**】** (Deleted by amendment, P.L. , c. )  
37 (pending before the Legislature as this bill)
- 38       f. "Inclusionary development" means a residential housing  
39 development in which a substantial percentage of the housing units  
40 are provided for a reasonable income range of **【**low and moderate  
41 income**】** low- and moderate-income households.
- 42       g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for **【**low and moderate income**】**  
44 low- and moderate-income housing purposes where a substantial  
45 percentage of the housing units are provided for a reasonable  
46 income range of **【**low and moderate income**】** low- and moderate-  
47 income households.

- 1 h. "Development" means any development for which  
2 permission may be required pursuant to the "Municipal Land Use  
3 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 4 i. "Agency" means the New Jersey Housing and Mortgage  
5 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
6 seq.).
- 7 j. "Prospective need" means a projection of housing needs  
8 based on development and growth which is reasonably likely to  
9 occur in a region or a municipality, as the case may be, as a result  
10 of actual determination of public and private entities. **[In**  
11 **determining prospective need, consideration shall be given to**  
12 **approvals of development applications, real property transfers, and**  
13 **economic projections prepared by the State Planning Commission**  
14 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**  
15 **196 et seq.)** Prospective need shall be determined by the  
16 methodology set forth pursuant to sections 6 and 7 of P.L. , c.  
17 (C. and C. ) (pending before the Legislature as this bill)  
18 for the fourth round and all future rounds of housing obligations.
- 19 k. "Person with a disability" means a person with a physical  
20 disability, infirmity, malformation, or disfigurement which is  
21 caused by bodily injury, birth defect, aging, or illness including  
22 epilepsy and other seizure disorders, and which shall include, but  
23 not be limited to, any degree of paralysis, amputation, lack of  
24 physical coordination, blindness or visual impairment, deafness or  
25 hearing impairment, the inability to speak or a speech impairment,  
26 or physical reliance on a service animal, wheelchair, or other  
27 remedial appliance or device.
- 28 l. "Adaptable" means constructed in compliance with the  
29 technical design standards of the barrier free subcode adopted by  
30 the Commissioner of Community Affairs pursuant to the "State  
31 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
32 et seq.) and in accordance with the provisions of section 5 of  
33 P.L.2005, c.350 (C.52:27D-123.15).
- 34 m. "Very **[low income]** low-income housing" means housing  
35 affordable according to federal Department of Housing and Urban  
36 Development or other recognized standards for home ownership  
37 and rental costs and occupied or reserved for occupancy by  
38 households with a gross household income equal to 30 percent or  
39 less of the median gross household income for households of the  
40 same size within the housing region in which the housing is located.
- 41 n. "Accessory dwelling unit" means a residential dwelling unit  
42 that provides complete independent living facilities with a private  
43 entrance for one or more persons, consisting of provisions for  
44 living, sleeping, eating, sanitation, and cooking, including a stove  
45 and refrigerator, and is located within a proposed or existing  
46 primary dwelling, within an existing or proposed structure that is  
47 accessory to a dwelling on the same lot, constructed in whole or  
48 part as an extension to a proposed or existing primary dwelling, or

- 1 constructed as a separate detached structure on the same lot as the  
2 existing or proposed primary dwelling.
- 3 o. "Builder's remedy" means court imposed site-specific relief  
4 for a litigant who seeks to build affordable housing for which the  
5 court requires a municipality to utilize zoning techniques such as  
6 mandatory set-asides or density bonuses, including techniques  
7 which provide for the economic viability of a residential  
8 development by including housing that is not for low- and  
9 moderate-income households.
- 10 p. "Commissioner" means the Commissioner of Community  
11 Affairs.
- 12 q. "Compliance certification" means the certification obtained  
13 by a municipality pursuant to section 3 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill), that protects the  
15 municipality from a builder's remedy during the current round of  
16 present and prospective need and through July 1 of the year the next  
17 round begins, which is also known as a "judgment of compliance"  
18 or "judgment of repose." The term "compliance certification" shall  
19 include a judgment of repose granted in an action filed pursuant to  
20 section 13 of P.L.1985, c.222 (C.52:27D-313).
- 21 r. "County level housing judge" means a judge appointed  
22 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
23 Legislature as this bill), to resolve disputes over the compliance of  
24 municipal fair share affordable housing obligations and municipal  
25 fair share plans and housing elements, with the "Fair Housing Act,"  
26 P.L.1985, c.222 (C.52:27D-301 et al.
- 27 s. "Deficient housing unit" means housing that: (1) is over fifty  
28 years old and overcrowded; (2) lacks complete plumbing; or (3)  
29 lacks complete kitchen facilities.
- 30 t. "Department" means the Department of Community Affairs.
- 31 u. "Fair share plan" means the plan or proposal that is in a form  
32 which may readily be adopted, with accompanying ordinances and  
33 resolutions, pursuant to subsection f. of section 3 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill),  
35 by which a municipality proposes to satisfy its obligation to create a  
36 realistic opportunity to meet its fair share of low- and moderate-  
37 income housing needs of its region and which details the  
38 affirmative measures the municipality proposes to undertake to  
39 achieve its fair share of low- and moderate-income housing, as  
40 provided in the municipal housing element, and addresses the  
41 development regulations necessary to implement the housing  
42 element, including, but not limited to, inclusionary requirements  
43 and development fees, and the elimination of unnecessary housing  
44 cost-generating features from the municipal land use ordinances and  
45 regulations.
- 46 v. "Housing element" means that portion of a municipality's  
47 master plan consisting of reports, statements, proposals, maps,  
48 diagrams, and text designed to meet the municipality's fair share of

1 its region's present and prospective housing needs, particularly with  
2 regard to low- and moderate-income housing, and which shall  
3 contain the municipal present and prospective obligation for  
4 affordable housing, determined pursuant to subsection f. of section  
5 3 of P.L. , c. (C. ) (pending before the Legislature as this  
6 bill).

7 w. "Program" means the Affordable Housing Dispute Resolution  
8 Program, established pursuant to section 5 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill).

10 x. "Transitional housing" means temporary housing that:

11 (1) includes, but is not limited to, single-room occupancy  
12 housing or shared living and supportive living arrangements;

13 (2) provides access to on-site or off-site supportive services for  
14 very low-income households who have recently been homeless or  
15 lack stable housing;

16 (3) is licensed by the department; and

17 (4) allows households to remain for a minimum of six months.

18 (cf: P.L.2017, c.131, s.199)

19

20 3. (New section) a. The Council on Affordable Housing,  
21 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
22 301 et al.), is abolished. Each municipality shall determine its  
23 municipal present and prospective obligations in accordance with  
24 the formulas established in sections 6 and 7 of P.L. , c. (C.  
25 and C. ) (pending before the Legislature as this bill) and may  
26 take into consideration the calculations in the report published by  
27 the department in accordance with this section.

28 b. Following the expiration of the third round of affordable  
29 housing obligations on July 1, 2025, a municipality shall have  
30 immunity from a builder's remedy if the municipality complies with  
31 the deadlines established in P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) for both determining present and  
33 prospective obligations, and for adopting a housing element and fair  
34 share plan to meet those obligations.

35 c. Prior to the beginning of each new 10-year round of housing  
36 obligations beginning with the fourth round on July 1, 2025, the  
37 Department of Community Affairs shall conduct a calculation of  
38 regional need and municipal present and prospective obligations in  
39 accordance with the formulas established in sections 6 and 7 of  
40 P.L. , c. (C. and C. ) (pending before the Legislature as  
41 this bill).

42 d. For the fourth round of affordable housing obligations, the  
43 department shall prepare and submit a report to the Governor, and,  
44 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
45 Legislature providing a report on the calculations of regional need  
46 and municipal obligations for each region of the State on or before  
47 August 1, 2024. The department shall provide the report to each  
48 municipality in the State at the same time that it submits the report



1 to the Governor and Legislature and shall also publish such report  
2 on the department's Internet website. For the fifth round, and each  
3 subsequent new round of housing obligations, the department shall  
4 prepare and submit a report to each municipality in the State, the  
5 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
6 19.1), to the Legislature on these calculations on or before August 1  
7 of the year prior to the start of the new round and shall also publish  
8 such report on the department's Internet website. For each 10-year  
9 round of housing obligations, a municipality may take into  
10 consideration the calculations in the report prepared by the  
11 department pursuant to this subsection in determining its present  
12 and prospective obligations.

13 e. Nothing in the provisions of subsections c., d., or f. of this  
14 section shall be interpreted to render any calculation in a report by  
15 the department published pursuant to this section binding on any  
16 municipality or other entity, nor to render any failure by the  
17 department to timely conduct the calculations or publish a report  
18 required by this section to alter the deadlines or process set forth in  
19 this section. The ultimate determination of a municipality's present  
20 and prospective need shall be through the process as set forth  
21 below.

22 f. (1) (a) With consideration of the calculations contained in  
23 the relevant report published by the department pursuant to this  
24 section, for each 10-year round of affordable housing obligations  
25 beginning with the fourth round, a municipality shall determine its  
26 present and prospective fair share obligation for affordable housing  
27 in accordance with the formulas established in sections 6 and 7 of  
28 P.L. , c. (C. and C. ) (pending before the Legislature as  
29 this bill) by resolution, which shall describe the basis for the  
30 municipality's determination and bind the municipality to adopt a  
31 housing element and fair share plan pursuant to paragraph (2) of  
32 this subsection based on this determination as may be adjusted by  
33 the program as set forth in this subsection.

34 (b) For the fourth round of affordable housing obligations, this  
35 determination of present and prospective fair share obligation shall  
36 be made by binding resolution no later than January 31, 2025.  
37 After adoption of this binding resolution, the municipality shall file  
38 an action regarding the resolution with the program no later than 48  
39 hours following adoption. The resolution, along with the date of  
40 filing with the program, shall be published on the program's  
41 publicly accessible Internet website. The municipality shall also  
42 publish the resolution on its publicly accessible Internet website, if  
43 the municipality maintains one. If the municipality does not meet  
44 this deadline, it immediately shall lose immunity from builder's  
45 remedy litigation until such time as the municipality is determined  
46 to have come into compliance with the "Fair Housing Act,"  
47 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
48 doctrine. A determination of the municipality's present and

1 prospective obligation may be established before a county level  
2 housing judge as part of any resulting declaratory judgment action  
3 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as  
4 amended by P.L. , c. (C. ) (pending before the Legislature  
5 as this bill), or through builder’s remedy litigation. If the  
6 municipality meets this January 31 deadline, then the municipality’s  
7 determination of its obligation shall be established by default  
8 beginning on March 1, 2025, as the municipality’s obligation for  
9 the fourth round, unless challenged by an interested party on or  
10 before February 28, 2025. An interested party may file a challenge  
11 with the program, after adoption of the binding resolution and prior  
12 to March 1, 2025, alleging that the municipality’s determination of  
13 its present and prospective obligation does not comply with the  
14 requirements of sections 6 and 7 of P.L. , c.  
15 (C. and C. ) (pending before the Legislature as this bill).  
16 For the fifth round, and each subsequent new round of housing  
17 obligations, the deadlines established in this subparagraph shall be  
18 on the last day of January, the last day of February, and the first day  
19 of March, respectively, of the year of the start of each new round.

20 (c) The Administrative Director of the Courts shall establish  
21 procedures for the program to consider a challenge and resolve a  
22 dispute initiated by an interested party pursuant to subparagraph (b)  
23 of this paragraph. To resolve a challenge, the program shall apply  
24 an objective assessment standard to determine whether or not the  
25 municipality’s calculation of its obligation is compliant with the  
26 requirements of sections 6 and 7 of P.L. , c.  
27 (C. and C. ) (pending before the Legislature as this bill).  
28 Any challenge must state with particularity how the municipal  
29 calculation fails to comply with sections 6 and 7 of P.L. , c. (C.  
30 and C. ) (pending before the Legislature as this bill) and  
31 include the challenger’s own calculation of the fair share  
32 obligations in compliance with sections 6 and 7 of P.L. , c. (C.  
33 and C. ) (pending before the Legislature as this bill). The  
34 program shall establish procedures to summarily dismiss any  
35 objection or challenge that does not meet these minimum standards.  
36 For the purpose of efficiency, the program shall, in its own  
37 discretion, permit multiple challenges to the same municipal  
38 determination to be consolidated. The program’s approach to  
39 resolving a dispute may include: (i) a finding that the municipality’s  
40 determination of its present and prospective need obligation did not  
41 facially comply with the requirements of sections 6 and 7 of P.L. ,  
42 c. (C. and C. ) (pending before the Legislature as this  
43 bill) and thus the municipality’s immunity shall be revoked; (ii) an  
44 adjustment of the municipality’s determination of its present and  
45 prospective need obligation to comply with the requirements of  
46 sections 6 and 7 of P.L. , c. (C. and C. ) (pending  
47 before the Legislature as this bill) without revoking immunity; or  
48 (iii) a rejection of a challenge and affirm the municipality’s

1 determination. The decision shall be provided to the municipality  
2 and all parties that have filed challenges no later than March 31 of  
3 the year when the current round is expiring and the new round is  
4 beginning and concurrently posted on the program's Internet  
5 website. The Administrative Director of the Courts shall establish  
6 procedures for any further appellate review of such determinations,  
7 and may establish an expedited process for consolidated review of  
8 any such challenges by the Supreme Court, provided that any party  
9 seeking appellate review shall not change the deadlines established  
10 for municipal filing of a housing element and fair share plan, and  
11 implementing ordinances.

12 (2) (a) A municipality shall adopt a housing element and fair  
13 share plan as provided for by the "Fair Housing Act," P.L.1985,  
14 c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate  
15 zoning and other ordinances and resolutions to implement its  
16 present and prospective obligation established in paragraph (1) of  
17 this subsection on or before June 30, 2025. After adoption of the  
18 housing element and fair share plan, and the proposal of drafts of  
19 the appropriate zoning and other ordinances and resolutions, the  
20 municipality shall within 48 hours of adoption or by June 30, 2025,  
21 whichever is sooner, file the same with the program as part of the  
22 action initiated pursuant to subparagraph (b) of paragraph (1) of this  
23 subsection through the program's Internet website. Any  
24 municipality that does not do so by June 30, 2025, shall not retain  
25 immunity from builder's remedy litigation until such time as the  
26 municipality is determined to have come into compliance with the  
27 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
28 Mount Laurel doctrine and shall be subject to review through the  
29 declaratory judgment process as established in paragraph (3) of this  
30 subsection. As part of its housing element and fair share plan, the  
31 municipality shall include an assessment of the degree to which the  
32 municipality has met its fair share obligation from the prior rounds  
33 of affordable housing obligations as established by prior court  
34 approval, or approval by the council, and determine to what extent  
35 this obligation is unfulfilled or whether the municipality has credits  
36 in excess of its prior round obligations. If a prior round obligation  
37 remains unfulfilled, or a municipality never received an approval  
38 from court or the council for any prior round, the municipality shall  
39 address such unfulfilled prior round obligation in its housing  
40 element and fair share plan. Units included as part of the  
41 municipality's unfulfilled prior round obligation shall not count  
42 towards the cap on units in the municipality's prospective need  
43 obligation. In addressing prior round obligations, the municipality  
44 shall retain any sites that, in furtherance of the prior round  
45 obligation, are the subject of a contractual agreement with a  
46 developer, or for which the developer has filed a complete  
47 application seeking subdivision or site plan approval prior to the  
48 date by which the housing element and fair share plan are required

1 to be submitted, and shall demonstrate how any sites that were not  
2 built in the prior rounds continue to present a realistic opportunity,  
3 which may include proposing changes to the zoning on the site to  
4 make its development more likely, and which may also include the  
5 dedication of municipal affordable housing trust fund dollars or  
6 other monetary or in-kind resources. The municipality shall only  
7 plan to replace any sites planned for development as provided by a  
8 prior court approval, settlement agreement, or approval by the  
9 council, with alternative development plans, if it is determined that  
10 the previously planned sites no longer present a realistic  
11 opportunity, and the sites in the alternative development plan  
12 provide at least an equivalent number of affordable units and are  
13 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
14 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a  
15 municipality proposes to replace a site for which a complete  
16 application seeking subdivision or site plan approval has not been  
17 filed prior to date by which the housing element and fair share plan  
18 is required to be submitted, there shall be a rebuttable presumption  
19 in any challenge filed to the municipality's plan that any site for  
20 which a zoning designation was adopted creating a realistic  
21 opportunity for the development of a site prior to July 1, 2020, or  
22 July 1 of every 10th year thereafter, as applicable, may be replaced  
23 with one or more alternative sites that provide a realistic  
24 opportunity for at least the same number of affordable units and is  
25 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
26 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the  
27 extent a municipality has credits, including bonus credits, from  
28 units created during a prior round that are otherwise permitted to be  
29 allocated toward the municipality's unfulfilled prior round  
30 obligation or present or prospective need obligation in an upcoming  
31 round, the municipality shall be entitled to rely on the rules,  
32 including rules for bonus credits, applicable for the round during  
33 which those credits were accumulated. If a municipality has credits  
34 in excess of its prior round obligations, and such excess credits  
35 represent housing that will continue to be deed-restricted and  
36 affordable through the current round, the municipality may include  
37 such housing, and applicable bonus credits, towards addressing the  
38 municipality's new calculation of prospective need. Consistent  
39 with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311),  
40 the total number of bonus credits shall in no circumstance exceed  
41 25 percent of the municipality's prospective obligation in any  
42 round. The municipality may in its plan lower its prospective need  
43 obligation to the extent necessary to prevent establishing a  
44 prospective need obligation that requires the municipality to  
45 provide a realistic opportunity for more than 1,000 housing units,  
46 after the application of any excess credits, or to prevent a  
47 prospective need obligation that exceeds 20 percent of the total  
48 number of households in a municipality according to the most

1 recent federal decennial census, not including any prior round  
2 obligation. If a municipality is subject to both a 1,000 unit cap or  
3 20 percent cap it may apply whichever cap results in a lower  
4 prospective need obligation. For the fifth round, and for each  
5 subsequent new round of housing obligations, the deadlines in this  
6 paragraph shall be June 30 for the adoption of the housing element  
7 and fair share plan, and the proposal of drafts of the appropriate  
8 zoning and other ordinances and resolutions to implement its  
9 present and prospective obligation, of the year of the start of the  
10 new round.

11 (b) Following the filing, in an action, of an adopted housing  
12 element and fair share plan pursuant to subparagraph (a) of this  
13 paragraph, an interested party may file a response on or before  
14 August 31, 2025 alleging that the municipality's fair share plan and  
15 housing element are not in compliance with the "Fair Housing Act,"  
16 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine.  
17 Such allegation shall not include a claim that a site on real property  
18 proposed by the interested party is a better site than a site in the  
19 plan, but rather shall be based on whether the housing element and  
20 fair share plan as proposed is compliant with the "Fair Housing  
21 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
22 doctrine. To resolve a challenge, the program shall apply an  
23 objective assessment standard to determine whether or not the  
24 municipality's housing element and fair share plan is compliant  
25 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)  
26 and the Mount Laurel doctrine. Any interested party that files a  
27 challenge shall specify with particularity which sites or elements of  
28 the municipal fair share plan do not comply with the "Fair Housing  
29 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
30 doctrine, and the basis for alleging such non-compliance. The  
31 program shall establish procedures to summarily dismiss any  
32 objection or challenge that does not meet these minimum standards.  
33 For the purpose of efficiency, the program shall, in its own  
34 discretion, permit multiple challenges to the same municipal  
35 housing element and fair share plan to be consolidated. If a  
36 municipality's fair share plan and housing element is not challenged  
37 on or before August 31, 2025, then the program shall review the fair  
38 share plan and housing element for consistency and to determine  
39 whether it is compliant with the "Fair Housing Act," P.L.1985,  
40 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, and  
41 issue a compliance certification unless these objective standards are  
42 not met. The program shall facilitate communication between the  
43 municipality and any interested parties for a challenge, and provide  
44 the municipality until December 31, 2025 to commit to revising its  
45 fair share plan and housing element in compliance with the changes  
46 requested in the challenge, or provide an explanation as to why it  
47 will not make all of the requested changes, or both. Upon  
48 resolution of a challenge, the program shall issue compliance

1 certification, conditioned on the municipality's commitment, as  
2 necessary, to revise its fair share plan and housing element in  
3 accordance with the resolution of the challenge. The program may  
4 also terminate immunity if it finds that the municipality is not  
5 determined to come into constitutional compliance at any point in  
6 the process. If by December 31, 2025, the municipality and any  
7 interested party that filed a response have resolved the issues raised  
8 in the response through agreement or withdrawal of the filing, then  
9 the program shall review the fair share plan and housing element for  
10 consistency and to determine whether it is compliant with the "Fair  
11 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount  
12 Laurel doctrine, and issue a compliance certification unless these  
13 objective standards are not met. For the fifth round, and each  
14 subsequent new round of housing obligations, the deadline  
15 established in this subparagraph for an interested party to file a  
16 challenge shall be August 31, and for the municipality to revise its  
17 housing element and fair share plan in response, shall be December  
18 31, of the year of the beginning of the new round.

19 (c) For the fourth round of affordable housing obligations, the  
20 implementing ordinances and resolutions, proposed pursuant to  
21 subparagraph (a) of this paragraph, and incorporating any changes  
22 from the program, shall be adopted on or before March 15, 2026.  
23 For the fifth round, and each subsequent new round of housing  
24 obligations, the deadline established in this subparagraph for the  
25 implementing ordinances and resolutions shall be on March 15 of  
26 the year following the beginning of the new round. After adoption  
27 of the implementing ordinances and resolutions by the municipality,  
28 the municipality shall immediately file the ordinances and  
29 resolutions with the program through the program's Internet  
30 website. Failure to meet the March 15 deadline shall result in the  
31 municipality losing immunity from builder's remedy litigation.

32 (d) The program may permit a municipality that still has a  
33 remaining dispute by interested parties to retain immunity from  
34 builder's remedy litigation into the year following the year in which  
35 a new round begins if the program, or county level housing judge,  
36 determines that the municipality has been unable to resolve the  
37 issues disputed despite being determined to come into constitutional  
38 compliance. The Administrative Director of the Courts shall  
39 develop procedures to enable a county level housing judge to  
40 resolve this dispute over the issuance of compliance certification  
41 through a summary proceeding in Superior Court following the year  
42 in which the new round begins. A judge shall be permitted to serve  
43 as a county level housing judge for more than one county in the  
44 same vicinage. The pendency of such a dispute shall not stay the  
45 deadline for adoption of implementing ordinances and resolutions  
46 pursuant to this paragraph.

47 (e) Once a municipality has received a compliance certification  
48 or otherwise has had its fair share obligation and housing element

1 and fair share plan finally determined via judgment of repose or  
2 other judgment, the municipality shall make the municipality's fair  
3 share plan and housing element, as well as any subsequently  
4 adopted implementing ordinances and resolutions, or amendments  
5 thereto, available to the department and the program for publication  
6 on the department's and program's respective Internet websites.

7 (3) (a) If a municipality fails to adhere to any of the deadlines  
8 established in paragraphs (1) or (2) of this subsection due to  
9 circumstances beyond the control of the municipality, including but  
10 not limited to an inability to meet a deadline due to an extreme  
11 weather event, then the program, or the county level housing judge,  
12 in accordance with court rules, may permit a municipality to have a  
13 grace period to come into compliance with the timeline, the length  
14 of which, and effect of which on later deadlines, shall be  
15 determined on a case-by-case basis.

16 (b) A municipality that has not adopted and published a binding  
17 resolution pursuant to paragraph (1) of this subsection or that has  
18 not adopted and filed a housing element and fair share plan pursuant  
19 to paragraph (2) of this subsection may seek compliance  
20 certification by filing an action pursuant to section 13 of P.L.1985,  
21 c.222 (C.52:27D-313), provided that any builder's remedy litigation  
22 filed by a plaintiff against such a municipality prior to such time  
23 may proceed notwithstanding such filing. In a municipality that has  
24 adopted and published a binding resolution pursuant to paragraph  
25 (1) of this subsection and has adopted and filed a housing element  
26 and fair share plan pursuant to paragraph (2) of this subsection, a  
27 court shall not grant a builder's remedy to a plaintiff in  
28 exclusionary zoning litigation during the timeframe after the timely  
29 submission of a binding resolution or fair share plan and housing  
30 element of a municipality, or both, and before a challenge is  
31 submitted, or during the timeframe of a challenge that is pending  
32 resolution with the program pursuant to this subsection. A court  
33 may grant a builder's remedy to a plaintiff in exclusionary zoning  
34 litigation after such timeframe upon a finding that the municipality:  
35 (i) is determined to be constitutionally noncompliant with its  
36 responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222  
37 (C.52:27D-301 et al.) or is participating in the program in bad faith;  
38 (ii) has failed to meet the deadlines established pursuant to P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill); or (iii)  
40 has, after receiving compliance certification, failed to comply with  
41 the terms of that certification by not actually allowing for the  
42 development of the affordable housing as provided for in its fair  
43 share plan and housing element through actions, omissions, or both,  
44 of a municipality or its subordinate boards.

45 (c) All parties shall bear their own fees and costs in proceedings  
46 before the program.

47 (d) A determination by the program as to the present and  
48 prospective need obligation or as to issuance of compliance

1 certification pursuant to this section shall be considered a final  
2 decision, subject to appellate review pursuant to the procedures set  
3 forth in subparagraph (c) of paragraph (1) of subsection f. of this  
4 section.

5 (e) A municipality shall not be deemed out of compliance with  
6 the deadlines of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill), or lose immunity from builder's remedy  
8 litigation, due to a failure by the program to promptly maintain and  
9 update its Internet website, or other operational failure of the  
10 program.

11

12 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
13 read as follows:

14 13. a. **[A]** If a municipality [which] has [filed a housing  
15 element may, at any time during a two-year period following the  
16 filing of the housing element, petition the council for a substantive  
17 certification of its element and ordinances or] adopted a housing  
18 element and fair share plan pursuant to section 3 of P.L. ,  
19 c. (C. ) (pending before the Legislature as this bill), but has  
20 failed to satisfy the June 30 deadline established pursuant to  
21 paragraph (2) of subsection f. of section 3 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill), for any round of  
23 affordable housing obligations, the municipality may request and be  
24 provided with a grace period pursuant to paragraph (3) of  
25 subsection f. of section 3 of P.L. , c. (C. ) (pending before  
26 the Legislature as this bill), if authorized by the program or county  
27 level housing judge, as determined by the rules of court. If a  
28 municipality that has not satisfied this June 30 deadline is not  
29 provided with a grace period, the municipality may institute an  
30 action for declaratory judgment granting it repose in the Superior  
31 Court [, but in no event shall a grant of substantive certification  
32 extend beyond a 10-year period starting on the date the municipality  
33 files its housing element with the council] for the 10-year period  
34 constituting the current round of fair share obligations. The  
35 municipality shall publish notice of its [petition] filing of a  
36 declaratory judgment action in a newspaper of general circulation  
37 within the municipality and county and shall make available to the  
38 public information on the element and ordinances by submitting  
39 such information to the program to be published on the Internet  
40 website of the program in accordance with [such procedures as the  
41 council shall establish. The council shall also establish a procedure  
42 for providing public notice of each petition which it receives]  
43 section 3 of P.L. , c. (C. ) (pending before the Legislature  
44 as this bill).

45 b. **[**Notwithstanding the provisions of subsection a. of this  
46 section, a municipality which filed a housing element prior to the  
47 effective date of P.L.1990, c.121, shall be permitted to petition for



1 substantive certification at any time within two years following that  
2 filing, or within one year following the effective date of P.L.1990,  
3 c.121, whichever shall result in permitting the municipality the  
4 longer period of time within which to petition.】 (Deleted by  
5 amendment, P.L. , c. ) (pending before the Legislature as this  
6 bill)

7 【The Council shall establish procedures for】 c. (1) A  
8 municipality or other interested party may file an action through the  
9 program seeking a realistic opportunity review 【at the midpoint of  
10 the certification period and shall provide for notice to the public】 at  
11 the midpoint of the certification period and shall provide for notice  
12 to the public, including a realistic opportunity review of any  
13 inclusionary development site in the housing element and fair share  
14 plan that has not received preliminary site plan approval prior to the  
15 midpoint of the 10-year round. If such an action is initiated by a  
16 municipality, the municipality shall propose one or more alternative  
17 sites with an accompanying development plan or plans that provide  
18 a realistic opportunity for the same number of affordable units and  
19 is otherwise in compliance with the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine,  
21 provided that if the facts demonstrate that the municipality or its  
22 subordinate boards have prevented the site from receiving site plan  
23 approval, then the program shall reject the municipality's challenge.

24 (2) Any party may file a request for information from the  
25 program regarding the progress of development at any inclusionary  
26 development site in the housing element and fair share plan of a  
27 municipality, or at any alternative site proposed by the  
28 municipality. The program may respond to a request independently  
29 or in coordination with the department.

30 (cf: P.L.2001, c.435, s.5)

31

32 5. (New section) a. There is established an Affordable Housing  
33 Dispute Resolution Program that shall have the purpose of  
34 efficiently resolving disputes involving the "Fair Housing Act,"  
35 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number  
36 of members, of at least three and no more than seven members who  
37 shall lead the administration of the program. The Chief Justice of  
38 the Supreme Court shall update the assignment of designated Mount  
39 Laurel judges to indicate which current or retired and on recall  
40 judges of the Superior Court shall serve as members, within 40 days  
41 following the effective date of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill). The Chief Justice of the  
43 Supreme Court may appoint other qualified experts as members if  
44 sufficient current and retired judges are unavailable. The Chief  
45 Justice of the Supreme Court shall take into consideration in  
46 making such appointments experience in the employment of  
47 alternative dispute resolution methods and in relevant subject  
48 matter.

- 1       b. The Chief Justice of the Supreme Court shall designate a  
2 member to serve as chair. The Chief Justice of the Supreme Court  
3 shall make new appointments as needs arise for new appointments.
- 4       c. The program, in its discretion and in accordance with Rules of  
5 Court, may consult or employ the services of one or more special  
6 masters or staff to assist it in rendering determinations, resolving  
7 disputes, and facilitating communication as required by  
8 subparagraph (b) of paragraph (2) of subsection f. of section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).  
10 In addition, the program may incorporate any existing or newly  
11 established court mediation or alternative dispute resolution process  
12 to assist the program in resolving disputes and facilitating  
13 communication among municipalities and interested parties.
- 14       d. The Administrative Director of the Courts shall establish a  
15 filing system via an Internet website in which the public is able to  
16 access, without cost, filings made pursuant to P.L. , c. (C. )  
17 (pending before the Legislature as this bill) and such other related  
18 filings as the Administrative Director of the Courts may include on  
19 the filing system.
- 20       e. The Administrative Director of the Courts may assign  
21 additional responsibilities to the program for resolving disputes  
22 arising out of or related to the "Fair Housing Act," P.L.1985, c.222  
23 (C.52:27D-301 et al.).
- 24       f. The Administrative Director of the Courts shall establish  
25 procedures for the purpose of efficiently resolving disputes  
26 involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
27 et al.), for circumstances in which the program is unable to address  
28 the dispute within the time limitations established pursuant to  
29 section 3 of P.L. , c. (C. ) (pending before the Legislature  
30 as this bill). As a part of the procedures established pursuant to this  
31 section, in order to facilitate an appropriate level of localized  
32 control of affordable housing decisions, for each vicinage, the Chief  
33 Justice of the Supreme Court shall designate a Superior Court judge  
34 who sits within the vicinage, or a retired judge who, during the  
35 judge's tenure as a judge, served within the vicinage, to serve as  
36 county level housing judge to resolve disputes over the compliance,  
37 of fair share plans and housing elements of municipalities within  
38 their designated county or counties, with the "Fair Housing Act,"  
39 P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise  
40 with respect to ongoing compliance or noncompliance with  
41 obligations created by fair share plans, housing elements, and the  
42 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A  
43 judge shall be permitted to serve as a county level housing judge for  
44 more than one county in the same vicinage.
- 45       g. The Administrative Director of the Courts shall promulgate,  
46 maintain, and apply a Code of Ethics that is modeled upon the Code  
47 of Judicial Conduct of the American Bar Association, as amended  
48 and adopted by the Supreme Court of New Jersey, and may

1 establish additional, more restrictive ethical standards in order to  
2 meet the specific needs of the program, and of county level housing  
3 judges.

4  
5 6. (New section) a. Municipal present need for each 10-year  
6 round of affordable housing obligations shall be determined by  
7 estimating the deficient housing units occupied by low- and  
8 moderate-income households in the region, following a  
9 methodology similar to the methodology used to determine third  
10 round municipal present need, through the use of most recent  
11 datasets made available through the federal decennial census and  
12 the American Community Survey.

13 b. For the purpose of determining regional need for the 10-year  
14 round of low- and moderate-income housing obligations, running  
15 from July 1, 2025 through June 30, 2035, and each 10-year round  
16 thereafter:

17 (1) The regions of the State shall be comprised as follows:

18 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
19 Passaic, and Sussex;

20 (b) Region 2 shall consist of the counties of Essex, Morris,  
21 Union, and Warren;

22 (c) Region 3 shall consist of the counties of Hunterdon,  
23 Middlesex, and Somerset;

24 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
25 and Ocean;

26 (e) Region 5 shall consist of the counties of Burlington,  
27 Camden, and Gloucester; and

28 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
29 Cumberland, and Salem.

30 (2) Regional prospective need for a 10-year round of low- and  
31 moderate-income housing obligations shall be determined through  
32 the calculation provided in this subsection. Projected household  
33 change for a 10-year round in a region shall be estimated by  
34 establishing the household change experienced in the region  
35 between the most recent federal decennial census, and the second-  
36 most recent federal decennial census. This household change, if  
37 positive, shall be divided by 2.5 to estimate the number of low- and  
38 moderate-income homes needed to address low- and moderate-  
39 income household change in the region, and to determine the  
40 regional prospective need for a 10-year round of low- and  
41 moderate-income housing obligations. If household change is zero  
42 or negative, the number of low- and moderate-income homes  
43 needed to address low- and moderate-income household change in  
44 the region and the regional prospective need shall be zero.

45  
46 7. (New section) a. The present and prospective fair share  
47 obligation for low- and moderate-income housing for each  
48 municipality in the State shall be determined as described in this

1 section. In addition, the March 8, 2018 unpublished decision of the  
2 Superior Court, Law Division, Mercer County, In re Application of  
3 Municipality of Princeton shall be referenced as to datasets and  
4 methodologies that are not explicitly addressed by this section.  
5 These determinations of municipal present and prospective need  
6 shall be based on a determination of the present and prospective  
7 regional need for low- and moderate-income housing, established  
8 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill). These calculations of municipal present  
10 and prospective need shall use necessary datasets that are updated  
11 to the greatest extent practicable.

12 b. A municipality's present need obligation shall be determined  
13 by estimating the existing deficient housing units currently  
14 occupied by low- and moderate-income households within the  
15 municipality, following a methodology comparable to the  
16 methodology used to determine third round present need, through  
17 the use of datasets made available through the federal decennial  
18 census and the American Community Survey.

19 c. A municipality's prospective fair share obligation of the  
20 regional prospective need for the upcoming 10-year round shall be  
21 determined in accordance with this subsection:

22 (1) If a municipality is a qualified urban aid municipality, the  
23 municipality shall be exempt from responsibility for any fair share  
24 prospective need obligation for the upcoming 10-year round. For  
25 the purposes of this section, a municipality is a qualified urban aid  
26 municipality if the municipality, as of July 1 of the year prior to the  
27 beginning of a new round, is designated by the department, pursuant  
28 to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and  
29 the municipality meets at least one of the following criteria:

30 (a) The ratio of substandard existing deficient housing units  
31 currently occupied by low- and moderate-income households within  
32 the municipality, compared to all existing housing in the  
33 municipality, is greater than the equivalent ratio in the region;

34 (b) The municipality has a population density greater than  
35 10,000 persons per square mile of land area; or

36 (c) The municipality has a population density of more than  
37 6,000, but less than 10,000 persons per square mile of land area,  
38 and less than five percent vacant parcels not used as farmland, as  
39 measured by the average of:

40 (i) The number of vacant land parcels in the municipality as a  
41 percentage of the total number of parcels in the municipality; and

42 (ii) The valuation of vacant land in the municipality as a  
43 percentage of total valuations in the municipality.

44 (2) A municipality's equalized nonresidential valuation factor  
45 shall be determined. To determine this factor, the changes in  
46 nonresidential property valuations in the municipality, since the  
47 beginning of the round preceding the round being calculated, shall  
48 be calculated using data published by the Division of Local

1 Government Services in the department. The change in the  
2 municipality's nonresidential valuations shall be divided by the  
3 regional total change in nonresidential valuations to determine the  
4 municipality's share of the regional change as the equalized  
5 nonresidential valuation factor.

6 (3) A municipality's income capacity factor shall be determined.  
7 This factor shall be determined by calculating the average of the  
8 following measures:

9 (a) The municipal share of the regional sum of the differences  
10 between the median municipal household income, according to the  
11 most recent American Community Survey Five-Year Estimates, and  
12 an income floor of \$100 below the lowest median household  
13 income in the region; and

14 (b) The municipal share of the regional sum of the differences  
15 between the median municipal household incomes and an income  
16 floor of \$100 below the lowest median household income in the  
17 region, weighted by the number of the households in the  
18 municipality.

19 (4) A municipality's land capacity factor shall be determined.  
20 This factor shall be determined by estimating the area of  
21 developable and redevelopable land in the municipality's  
22 boundaries, and regional boundaries, that may accommodate  
23 development through the use of the "land use / land cover data"  
24 most recently published by the Department of Environmental  
25 Protection, and weighing such land based on the planning area type  
26 in which such land is located. After the weighing factors are  
27 applied, the sum of the total developable and redevelopable land  
28 area that may accommodate development in the municipality, and in  
29 the region shall be determined. The municipality's share of its  
30 region's developable and redevelopable land shall be its land  
31 capacity factor. Developable and redevelopable land that may  
32 accommodate development shall be weighted based on the planning  
33 area type in which such land is located, as designated pursuant to  
34 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111  
35 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as  
36 follows:

37 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
38 of 1.0;

39 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
40 1.0;

41 (c) Planning Area 3 (Fringe) shall have a weighting factor of  
42 0.5;

43 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

44 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
45 weighting factor of 0.0;

46 (f) Centers in Planning Areas 1 and 2 shall have a weighting  
47 factor of 1.0;

- 1 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
2 factor of 0.5;
- 3 (h) Pinelands Regional Growth Area shall have a weighting  
4 factor of 0.5;
- 5 (i) Pinelands Town shall have a weighting factor of 0.5;
- 6 (j) All other Pinelands shall have a weighting factor of 0.0;
- 7 (k) Meadowlands shall have a weighting factor of 1.0;
- 8 (l) Meadowlands Center shall have a weighting factor of 1.0;
- 9 (m) Highlands Preservation Area shall have a weighting factor  
10 of 0.0;
- 11 (n) Highlands Planning Area Existing Community Zone, opted  
12 in municipality by May 1, 2022 shall have a weighting factor of 1.0;
- 13 (o) Highlands Planning Area, State-designated sewer service  
14 area, municipality not opted in by May 1, 2022, shall have a  
15 weighting factor of 1.0; and
- 16 (p) All other Highlands Planning Areas shall have a weighting  
17 factor of 0.0.
- 18 (5) The equalized nonresidential valuation factor, income  
19 capacity factor, and land capacity factor, determined in paragraphs  
20 (2), (3), and (4) of this subsection, shall be averaged to yield the  
21 municipality's average allocation factor for distributing gross  
22 regional prospective need to the municipality. The regional  
23 prospective need shall then be multiplied by the municipality's  
24 average allocation factor to determine the municipality's gross  
25 prospective need for the 10-year round.
- 26 (6) Secondary sources of supply and demand shall be adjusted  
27 for by first calculating demolitions of low- and moderate-income  
28 housing, and housing creation through low- and moderate-income  
29 residential conversions. A municipality's share of low- and  
30 moderate-income conversions shall then be subtracted from the sum  
31 of each municipality's allocated share of gross prospective need and  
32 demolitions of low- and moderate-income housing.
- 33
- 34 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
35 as follows:
- 36 4. a. Upon failure to perform any obligation of a residential  
37 mortgage by the residential mortgage debtor and before any  
38 residential mortgage lender may accelerate the maturity of any  
39 residential mortgage obligation and commence any foreclosure or  
40 other legal action to take possession of the residential property  
41 which is the subject of the mortgage, the residential mortgage  
42 lender shall give a notice of intention, which shall include a notice  
43 of the right to cure the default as provided in section 5 of P.L.1995,  
44 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
45 advance of such action as provided in this section, to the residential  
46 mortgage debtor, and, if the mortgage is secured by a residence for  
47 which a restriction on affordability was recorded in the county in  
48 which the property is located, the clerk of the municipality in which

1 the subject property is located, the municipal housing liaison, if one  
2 has been appointed by the municipality [pursuant to the regulations  
3 of the Council on Affordable Housing, and the Commissioner of  
4 Community Affairs]. For the purposes of this section, "restriction  
5 on affordability" means any conditions recorded with a mortgage or  
6 a deed which would limit the sale of such property to income  
7 qualified households pursuant to the rules adopted to effectuate the  
8 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

9 b. Notice of intention to take action as specified in subsection  
10 a. of this section shall be in writing, provided to the Department of  
11 Community Affairs in accordance with subsection a. of section 2 of  
12 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
13 certified mail, return receipt requested, at the debtor's last known  
14 address, and, if different, to the address of the property which is the  
15 subject of the residential mortgage. The notice is deemed to have  
16 been effectuated on the date the notice is delivered in person or  
17 mailed to the party.

18 c. The written notice shall clearly and conspicuously state in a  
19 manner calculated to make the debtor aware of the situation:

20 (1) the particular obligation or real estate security interest;

21 (2) the nature of the default claimed;

22 (3) the right of the debtor to cure the default as provided in  
23 section 5 of P.L.1995, c.244 (C.2A:50-57);

24 (4) what performance, including what sum of money, if any, and  
25 interest, shall be tendered to cure the default as of the date specified  
26 under paragraph (5) of this subsection c.;

27 (5) the date by which the debtor shall cure the default to avoid  
28 initiation of foreclosure proceedings, which date shall not be less  
29 than 30 days after the date the notice is effective, and the name and  
30 address and phone number of a person to whom the payment or  
31 tender shall be made;

32 (6) that if the debtor does not cure the default by the date  
33 specified under paragraph (5) of this subsection c., the lender may  
34 take steps to terminate the debtor's ownership in the property by  
35 commencing a foreclosure suit in a court of competent jurisdiction;

36 (7) that if the lender takes the steps indicated pursuant to  
37 paragraph (6) of this subsection c., a debtor shall still have the right  
38 to cure the default pursuant to section 5 of P.L.1995, c.244  
39 (C.2A:50-57), but that the debtor shall be responsible for the  
40 lender's court costs and attorneys' fees in an amount not to exceed  
41 that amount permitted pursuant to the Rules Governing the Courts  
42 of the State of New Jersey;

43 (8) the right, if any, of the debtor to transfer the real estate to  
44 another person subject to the security interest and that the transferee  
45 may have the right to cure the default as provided in P.L.1995,  
46 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

47 (9) that the debtor is advised to seek counsel from an attorney of  
48 the debtor's own choosing concerning the debtor's residential

1 mortgage default situation, and that, if the debtor is unable to obtain  
2 an attorney, the debtor may communicate with the New Jersey Bar  
3 Association or Lawyer Referral Service in the county in which the  
4 residential property securing the mortgage loan is located; and that,  
5 if the debtor is unable to afford an attorney, the debtor may  
6 communicate with the Legal Services Office in the county in which  
7 the property is located;

8 (10) the possible availability of financial assistance for curing a  
9 default from programs operated by the State or federal government  
10 or nonprofit organizations, if any, as identified by the  
11 Commissioner of Banking and Insurance and, if the property is  
12 subject to restrictions on affordability, the address and phone  
13 number of the municipal affordable housing liaison and of the New  
14 Jersey Housing and Mortgage Finance Agency. This requirement  
15 shall be satisfied by attaching a list of such programs promulgated  
16 by the commissioner;

17 (11) the name and address of the lender and the telephone  
18 number of a representative of the lender whom the debtor may  
19 contact if the debtor disagrees with the lender's assertion that a  
20 default has occurred or the correctness of the mortgage lender's  
21 calculation of the amount required to cure the default;

22 (12) that if the lender takes the steps indicated pursuant to  
23 paragraph (6) of this subsection, the debtor has the option to  
24 participate in the Foreclosure Mediation Program following the  
25 filing of a mortgage foreclosure complaint by initiating mediation  
26 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
27 c.64 (C.2A:50-77). Notice of the option to participate in the  
28 Foreclosure Mediation Program shall adhere to the requirements of  
29 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
30 procedures, or guidelines adopted by the Supreme Court;

31 (13) that the debtor is entitled to housing counseling, at no cost  
32 to the debtor, through the Foreclosure Mediation Program  
33 established by the New Jersey Judiciary, including information on  
34 how to contact the program;

35 (14) that if the property which is the subject of the mortgage has  
36 more than one dwelling unit but less than five, one of which is  
37 occupied by the debtor or a member of the debtor's immediate  
38 family as the debtor's or member's residence at the time the loan is  
39 originated, and is not properly maintained and meets the necessary  
40 conditions for receivership eligibility, established pursuant to  
41 section 4 of the "Multifamily Housing Preservation and  
42 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
43 mortgage lender shall file an order to show cause to appoint a  
44 receiver; and

45 (15) that the lender is either licensed in accordance with the  
46 "New Jersey Residential Mortgage Lending Act," sections 1  
47 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)



1 or exempt from licensure under the act in accordance with  
2 applicable law.

3 d. The notice of intention to foreclose required to be provided  
4 pursuant to this section shall not be required if the debtor has  
5 voluntarily surrendered the property which is the subject of the  
6 residential mortgage.

7 e. The duty of the lender under this section to serve notice of  
8 intention to foreclose is independent of any other duty to give  
9 notice under the common law, principles of equity, State or federal  
10 statute, or rule of court and of any other right or remedy the debtor  
11 may have as a result of the failure to give such notice.

12 f. Compliance with this section and subsection a. of section 2  
13 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
14 pleadings of any legal action referred to in this section. If the  
15 plaintiff in any complaint seeking foreclosure of a residential  
16 mortgage alleges that the property subject to the residential  
17 mortgage has been abandoned or voluntarily surrendered, the  
18 plaintiff shall plead the specific facts upon which this allegation is  
19 based.

20 g. If more than 180 days have elapsed since the date the notice  
21 required pursuant to this section is sent, and any foreclosure or  
22 other legal action to take possession of the residential property  
23 which is the subject of the mortgage has not yet been commenced,  
24 the lender shall send a new written notice at least 30 days, but not  
25 more than 180 days, in advance of that action.

26 h. If the property which is the subject of the notice of intention  
27 to foreclose has more than one dwelling unit but less than five, one  
28 of which is occupied by the debtor or a member of the debtor's  
29 immediate family as the debtor's or member's residence at the time  
30 the loan is originated, and is not properly maintained and meets the  
31 necessary conditions for receivership eligibility, established  
32 pursuant to section 4 of the "Multifamily Housing Preservation and  
33 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
34 mortgage lender shall file an order to show cause to appoint a  
35 receiver.

36 (cf: P.L.2019, c.134, s.4)

37

38 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
39 follows:

40 2. The New Jersey Council on Physical Fitness and Sports,  
41 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
42 authorized to provide grants to assist low-income families in  
43 purchasing the protective eyewear. As used in this section, a "low-  
44 income family" means a family which qualifies for low-income  
45 housing under the standards promulgated by the **【Council on**  
46 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
47 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222

1 (C.52:27D-301 et al.).

2 (cf: P.L.2005, c.306, s.2)

3

4 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
5 read as follows:

6 25. a. The **【**Council on Affordable Housing shall take into  
7 consideration the**】** regional master plan **【**prior to making any**】** shall  
8 be taken into account as part of the determination of obligations  
9 pursuant to the method in section 7 of P.L. , c. (C. )  
10 (pending before the Legislature as this bill) regarding the allocation  
11 of the prospective fair share of the housing need **【**in any  
12 municipality in the Highlands Region**】** under the "Fair Housing  
13 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【**the**】** any fair share  
14 period subsequent to **【**1999**】** the effective date of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
16 a municipality is in the Highlands Region.

17 b. Nothing in **【**this act**】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
18 affect protections provided through a grant of substantive  
19 certification or a judgment of repose granted prior to **【**the date of  
20 enactment of this act**】** August 10, 2004.

21 (cf: P.L.2004, c.120, s.25)

22

23 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
24 read as follows:

25 5. The requirements of this act shall not apply to:

26 a. Depository institutions; but subsidiaries and service  
27 corporations of these institutions shall not be exempt. A depository  
28 institution may register with the department for the purpose of  
29 sponsoring individuals, licensed as mortgage loan originators  
30 subject to subparagraph (b) of paragraph (1) of subsection c. of  
31 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
32 registered entity obtains and maintains bond coverage for mortgage  
33 loan originators consistent with section 13 of P.L.2009, c.53  
34 (C.17:11C-63). A depository institution registered with the  
35 department in accordance with this subsection a. shall otherwise  
36 remain exempt from the licensing requirements of P.L.2009, c.53  
37 (C.17:11C-51 et seq.).

38 b. A registered mortgage loan originator that is registered  
39 under the federal "Secure and Fair Enforcement for Mortgage  
40 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
41 et seq.).

42 c. A licensed attorney who negotiates the terms of a residential  
43 mortgage loan on behalf of a client as an ancillary matter to the  
44 attorney's representation of the client, unless the attorney is  
45 compensated by a residential mortgage lender, residential mortgage  
46 broker, or mortgage loan originator.

1 d. A person licensed as a real estate broker or salesperson  
2 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
3 residential mortgage lender or residential mortgage broker. Any  
4 person holding a license under this act as a residential mortgage  
5 lender or broker shall be exempt from the licensing and other  
6 requirements of R.S.45:15-1 et seq. in the performance of those  
7 functions authorized by this act.

8 e. Any employer, other than a residential mortgage lender, who  
9 provides residential mortgage loans to his employees as a benefit of  
10 employment which are at an interest rate which is not in excess of  
11 the usury rate in existence at the time the loan is made, as  
12 established in accordance with the law of this State, and on which  
13 the borrower has not agreed to pay, directly or indirectly, any  
14 charge, cost, expense or any fee whatsoever, other than that interest.

15 f. The State of New Jersey or a municipality, or any agency or  
16 instrumentality thereof, which, in accordance with a housing  
17 element that has previously received substantive certification from  
18 the Council on Affordable Housing, or a judgment of repose or  
19 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
21 contribution agreement with a municipality that has received a  
22 certification, employs or proposes to employ municipally generated  
23 funds, funds obtained through any State or federal subsidy, or funds  
24 acquired by the municipality under a regional contribution  
25 agreement, to finance the provision of affordable housing by  
26 extending loans or advances, the repayment of which is secured by  
27 a lien, subordinate to any prior lien, upon the property that is to be  
28 rehabilitated.

29 g. Any individual who offers or negotiates terms of a  
30 residential mortgage loan:

- 31 (1) with or on behalf of an immediate family member; or  
32 (2) secured by a dwelling that serves as the individual's  
33 residence.

34 h. Any person who, during a calendar year takes three or fewer  
35 residential mortgage loan applications or offers or negotiates the  
36 terms of three or fewer residential mortgage loans or makes three or  
37 fewer residential mortgage loans related to manufactured housing  
38 structures which are:

- 39 (1) titled by the New Jersey Motor Vehicle Commission;  
40 (2) located in a mobile home park as defined in subsection e. of  
41 section 3 of P.L.1983, c.400 (C.54:4-1.4); and  
42 (3) exempt from taxation as real property pursuant to subsection  
43 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

44 i. A bona fide not for profit entity and any individuals directly  
45 employed by that entity, so long as the entity maintains its tax  
46 exempt status under Section 501(c)(3) of the Internal Revenue Code  
47 of 1986 and otherwise meets the definition of "bona fide not for  
48 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as

1 periodically determined by the department in accordance with rules  
2 established by the commissioner.

3 (cf: P.L.2018, c.108, s.3)

4

5 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
6 read as follows:

7 2. a. A person who violates a requirement of this act shall be  
8 warned of the violation by the enforcing official. The parent or  
9 legal guardian of that person also may be fined a maximum of \$25  
10 for the person's first offense and a maximum of \$100 for a  
11 subsequent offense if it can be shown that the parent or guardian  
12 failed to exercise reasonable supervision or control over the  
13 person's conduct. Penalties provided in this section for a failure to  
14 wear a helmet may be waived if an offender or his parent or legal  
15 guardian presents suitable proof that an approved helmet was  
16 owned at the time of the violation or has been purchased since the  
17 violation occurred.

18 b. All money collected as fines under subsection a. of this  
19 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
20 10.6) shall be deposited in a nonlapsing revolving fund to be known  
21 as the "Bicycle and Skating Safety Fund." Interest earned on  
22 money deposited in the fund shall accrue to the fund. Money in the  
23 fund shall be utilized by the director to provide educational  
24 programs devoted to bicycle, roller skating and skateboarding  
25 safety. If the director determines that sufficient money is available  
26 in the fund, he also may use, in a manner prescribed by rule and  
27 regulation, the money to assist **[low income]** low-income families  
28 in purchasing approved bicycle helmets. For the purposes of this  
29 subsection, **["low income family"]** "low-income family" means a  
30 family which qualifies for **[low income]** low-income housing under  
31 the standards promulgated by the **[Council on Affordable Housing]**  
32 New Jersey Housing and Mortgage Finance Agency pursuant to the  
33 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

34 (cf: P.L.1997, c.411, s.11)

35

36 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
37 read as follows:

38 33. The Legislature finds and declares:

39 a. The collection of development fees from builders of  
40 residential and non-residential properties has been authorized by the  
41 court through the powers **[delegated to the Council on Affordable**  
42 **Housing]** established pursuant to the "Fair Housing Act," P.L.1985,  
43 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
44 that the role of the Council on Affordable Housing has not  
45 developed in practice as intended, the Legislature further  
46 determines that authority relating to rulemaking on the collection of  
47 residential and non-residential development fees is appropriately

1 delegated to the Department of Community Affairs, given the  
2 department's existing roles related to local government finance and  
3 the funding and financing of affordable housing throughout the  
4 State.

5 b. New Jersey's land resources are becoming more scarce, while  
6 its redevelopment needs are increasing. In order to balance the  
7 needs of developing and redeveloping communities, a reasonable  
8 method of providing for the housing needs of **【low and moderate**  
9 **income】** low-, moderate-, and 【middle income】 middle-income  
10 households, without mandating the inclusion of housing in every  
11 non-residential project, must be established.

12 c. A Statewide non-residential development fee program, which  
13 permits municipalities **【under the council's jurisdiction】** that have  
14 obtained or are in the process of seeking compliance certification  
15 to retain these fees for use in the municipality will provide a fair and  
16 balanced funding method to address the State's affordable housing  
17 needs, while providing an incentive to all municipalities to 【seek  
18 substantive】 obtain compliance certification 【from the council】.

19 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
20 organizations are directed to invest in the Casino Reinvestment  
21 Development Authority to ensure that the development of housing  
22 for families of **【low and moderate income】** low- and moderate-  
23 income shall be provided. The Casino Reinvestment Development  
24 Authority **【, in consultation with the council,】** shall work to  
25 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
26 et al.).

27 e. **【The "Statewide Non-Residential Development Fee Act,"**  
28 **sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through**  
29 **C.40:55D-8.7), prohibits municipalities from imposing their own**  
30 **fees to fund affordable housing on non-residential development, and**  
31 **P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this**  
32 **underlying policy.】** Deleted by amendment P.L. , c. (pending  
33 before the Legislature as this bill)

34 f. The negative impact of a State policy that over-relies on a  
35 municipal fee structure and of State programs that require a  
36 municipality to impose fees and charges on developers must be  
37 balanced against any public good expected from such regulation. It  
38 is undisputable that the charging of fees at high levels dissuades  
39 commerce from locating within a State or municipality or locality  
40 and halts non-residential and residential development, and these ill  
41 effects directly increase the overall costs of housing, and could  
42 impede the constitutional obligation to provide for a realistic  
43 opportunity for housing for families at all income levels.  
44 (cf: P.L.2009, c.90, s.36)

45  
46 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
47 read as follows:

1 34. As used in sections 32 through 38 of P.L.2008, c.46  
2 (C.40:55D-8.1 through C.40:55D-8.7):

3 "Construction" means new construction and additions, but does  
4 not include alterations, reconstruction, renovations, and repairs as  
5 those terms are defined under the State Uniform Construction Code  
6 promulgated pursuant to the "State Uniform Construction Code  
7 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

8 "Commissioner" means the Commissioner of Community  
9 Affairs.

10 **["Council" means the Council on Affordable Housing,  
11 established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

12 "Department" means the Department of Community Affairs.

13 "Developer" means the legal or beneficial owner or owners of a  
14 lot or of any land proposed to be included in a proposed  
15 development, including the holder of an option or contract to  
16 purchase, or other person having an enforceable proprietary interest  
17 in such land.

18 "Equalized assessed value" means the assessed value of a  
19 property divided by the current average ratio of assessed to true  
20 value for the municipality in which the property is situated, as  
21 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
22 c.123 (C.54:1-35a through C.54:1-35c).

23 "Mixed use development" means any development which  
24 includes both a non-residential development component and a  
25 residential development component, and shall include developments  
26 for which (1) there is a common developer for both the residential  
27 development component and the non-residential development  
28 component, provided that for purposes of this definition, multiple  
29 persons and entities may be considered a common developer if there  
30 is a contractual relationship among them obligating each entity to  
31 develop at least a portion of the residential or non-residential  
32 development, or both, or otherwise to contribute resources to the  
33 development; and (2) the residential and non-residential  
34 developments are located on the same lot or adjoining lots,  
35 including but not limited to lots separated by a street, a river, or  
36 another geographical feature.

37 "Non-residential development" means: (1) any building or  
38 structure, or portion thereof, including but not limited to any  
39 appurtenant improvements, which is designated to a use group other  
40 than a residential use group according to the State Uniform  
41 Construction Code promulgated to effectuate the "State Uniform  
42 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
43 including any subsequent amendments or revisions thereto; (2)  
44 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
45 the entirety of all continuing care facilities within a continuing care  
46 retirement community which is subject to the "Continuing Care  
47 Retirement Community Regulation and Financial Disclosure Act,"  
48 P.L.1986, c.103 (C.52:27D-330 et seq.).

1 "Non-residential development fee" means the fee authorized to  
2 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
3 (C.40:55D-8.1 through C.40:55D-8.7).

4 "Relating to the provision of housing" shall be liberally  
5 construed to include the construction, maintenance, or operation of  
6 housing, including but not limited to the provision of services to  
7 such housing and the funding of any of the above.

8 "Spending plan" means a method of allocating funds collected  
9 and to be collected pursuant to an approved municipal development  
10 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
11 for the purpose of meeting the housing needs of low and moderate  
12 income individuals.

13 "Treasurer" means the Treasurer of the State of New Jersey.  
14 (cf: P.L.2008, c.46, s.34)

15

16 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
17 read as follows:

18 35. a. Beginning on the effective date of P.L.2008, c.46  
19 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
20 resulting in non-residential development, as follows:

21 (1) A fee equal to two and one-half percent of the equalized  
22 assessed value of the land and improvements, for all new non-  
23 residential construction on an unimproved lot or lots; or

24 (2) A fee equal to two and one-half percent of the increase in  
25 equalized assessed value, of the additions to existing structures to  
26 be used for non-residential purposes.

27 b. All non-residential construction of buildings or structures on  
28 property used by churches, synagogues, mosques, and other houses  
29 of worship, and property used for educational purposes, which is  
30 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
31 imposition of a non-residential development fee pursuant to this  
32 section, provided that the property continues to maintain its tax  
33 exempt status under that statute for a period of at least three years  
34 from the date of issuance of the certificate of occupancy. In  
35 addition, the following shall be exempt from the imposition of a  
36 non-residential development fee:

37 (1) parking lots and parking structures, regardless of whether the  
38 parking lot or parking structure is constructed in conjunction with a  
39 non-residential development, such as an office building, or whether  
40 the parking lot is developed as an independent non-residential  
41 development;

42 (2) any non-residential development which is an amenity to be  
43 made available to the public, including, but not limited to,  
44 recreational facilities, community centers, and senior centers, which  
45 are developed in conjunction with or funded by a non-residential  
46 developer;

1 (3) non-residential construction resulting from a relocation of or  
2 an on-site improvement to a nonprofit hospital or a nursing home  
3 facility;

4 (4) projects that are located within a specifically delineated  
5 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
6 c.346 (C.34:1B-208);

7 (5) projects that are located within an eligible municipality, as  
8 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
9 majority of the project is located within a one-half mile radius of  
10 the midpoint of a platform area for a light rail system; and

11 (6) projects determined by the New Jersey Transit Corporation  
12 to be consistent with a transit village plan developed by a transit  
13 village designated by the Department of Transportation.

14 A developer of a non-residential development exempted from the  
15 non-residential development fee pursuant to this section shall be  
16 subject to it at such time the basis for the exemption set forth in this  
17 subsection no longer applies, and shall make the payment of the  
18 non-residential development fee, in that event, within three years  
19 after that event or after the issuance of the final certificate of  
20 occupancy of the non-residential development whichever is later.

21 For purposes of this subsection, "recreational facilities and  
22 community center" means any indoor or outdoor buildings, spaces,  
23 structures, or improvements intended for active or passive  
24 recreation, including but not limited to ball fields, meeting halls,  
25 and classrooms, accommodating either organized or informal  
26 activity; and "senior center" means any recreational facility or  
27 community center with activities and services oriented towards  
28 serving senior citizens.

29 If a property which was exempted from the collection of a non-  
30 residential development fee thereafter ceases to be exempt from  
31 property taxation, the owner of the property shall remit the fees  
32 required pursuant to this section within 45 days of the termination  
33 of the property tax exemption. Unpaid non-residential development  
34 fees under these circumstances may be enforceable by the  
35 municipality as a lien against the real property of the owner.

36 c. (1) Unless authorized to pay directly to the municipality in  
37 which the non-residential construction is occurring in accordance  
38 with paragraph (2) of this subsection, developers shall pay non-  
39 residential development fees imposed pursuant to P.L.2008, c.46  
40 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
41 subsection g. of this section in a manner and on such forms as  
42 required by the Treasurer, provided that a certified proof concerning  
43 the payment shall be furnished by the Treasurer, to the  
44 municipality.

45 (2) The **【council】** department shall maintain on its Internet  
46 website a list of each municipality that is authorized to use the  
47 development fees collected pursuant to this section and that has a  
48 confirmed status of compliance with the "Fair Housing Act,"



1 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
2 seeking compliance certification, which compliance shall include a  
3 spending plan **[authorized by the council]** pursuant to section 8 of  
4 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

5 (3) No later than 90 days following the enactment of P.L. , c.  
6 (C. ) (pending before the Legislature as this bill), any  
7 municipality that is or has been authorized to retain and expend  
8 non-residential development fees shall provide the department with  
9 a detailed accounting of all such fees that have been collected and  
10 expended since the inception of the municipal authorization to  
11 collect and retain said fees.

12 (4) Beginning with the year after the enactment of P.L. , c.  
13 (C. ) (pending before the Legislature as this bill), by January  
14 15, every municipality that is or has been authorized to retain and  
15 expend non-residential development fees shall provide the  
16 department with a detailed accounting of all such fees that have  
17 been collected and expended previous year.

18 d. The payment of non-residential development fees required  
19 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
20 through C.40:55D-8.7) shall be made prior to the issuance of a  
21 certificate of occupancy for such development. A final certificate  
22 of occupancy shall not be issued for any non-residential  
23 development until such time as the fee imposed pursuant to this  
24 section has been paid by the developer. A non-residential developer  
25 may deposit with the appropriate entity the development fees as  
26 calculated by the municipality under protest, and the local code  
27 enforcement official shall thereafter issue the certificate of  
28 occupancy provided that the construction is otherwise eligible for a  
29 certificate of occupancy.

30 e. The construction official responsible for the issuance of a  
31 building permit shall notify the local tax assessor of the issuance of  
32 the first building permit for a development which may be subject to  
33 a non-residential development fee. Within 90 days of receipt of that  
34 notice, the municipal tax assessor, based on the plans filed, shall  
35 provide an estimate of the equalized assessed value of the non-  
36 residential development. The construction official responsible for  
37 the issuance of a final certificate of occupancy shall notify the local  
38 assessor of any and all requests for the scheduling of a final  
39 inspection on property which may be subject to a non-residential  
40 development fee. Within 10 business days of a request for the  
41 scheduling of a final inspection, the municipal assessor shall  
42 confirm or modify the previously estimated equalized assessed  
43 value of the improvements of the non-residential development in  
44 accordance with the regulations adopted by the Treasurer pursuant  
45 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
46 development fee pursuant to sections 32 through 38 of P.L.2008,  
47 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
48 developer of the amount of the non-residential development fee.

1 Should the municipality fail to determine or notify the developer of  
2 the amount of the non-residential development fee within 10  
3 business days of the request for final inspection, the developer may  
4 estimate the amount due and pay that estimated amount consistent  
5 with the dispute process set forth in subsection b. of section 37 of  
6 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
7 residential development fee, provided the developer is in full  
8 compliance with all other applicable laws, the municipality shall  
9 issue a final certificate of occupancy for the subject property.  
10 Failure of the municipality to comply with the timeframes or  
11 procedures set forth in this subsection may subject it to penalties to  
12 be imposed by the commissioner; any penalties so imposed shall be  
13 deposited into the "New Jersey Affordable Housing Trust Fund"  
14 established pursuant to section 20 of P.L.1985, c.222 as amended  
15 by section 17 of P.L.2008, c.46 (C.52:27D-320).

16 A developer of a mixed use development shall be required to pay  
17 the Statewide non-residential development fee relating to the non-  
18 residential development component of a mixed use development  
19 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

20 Non-residential construction which is connected with the  
21 relocation of the facilities of a for-profit hospital shall be subject to  
22 the fee authorized to be imposed under this section to the extent of  
23 the increase in equalized assessed valuation in accordance with  
24 regulations to be promulgated by the Director of the Division of  
25 Taxation, Department of the Treasury.

26 f. Any municipality that is not in compliance with the  
27 requirements established pursuant to sections 32 through 38 of  
28 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
29 regulations of the **【council】** commissioner adopted thereto, may be  
30 subject to forfeiture of any or all funds remaining within its  
31 municipal development trust fund. Any funds so forfeited shall be  
32 deposited into the New Jersey Affordable Housing Trust Fund  
33 established pursuant to section 20 of P.L.1985, c.222 as amended  
34 by section 17 of P.L.2008, c.46 (C.52:27D-320).

35 g. The Treasurer shall credit to the "Urban Housing Assistance  
36 Fund," established pursuant to section 13 of P.L.2008, c.46  
37 (C.52:27D-329.7) annually from the receipts of the fees authorized  
38 to be imposed pursuant to this section an amount equal to \$20  
39 million; all receipts in excess of this amount shall be deposited into  
40 the "New Jersey Affordable Housing Trust Fund," established  
41 pursuant to section 20 of P.L.1985, c.222 as amended by section 17  
42 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
43 that fund.

44 The Treasurer shall adopt such regulations as necessary to  
45 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
46 through C.40:55D-8.7), in accordance with the "Administrative  
47 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

48 (cf: P.L.2008, c.46, s.35)

1       16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
2 read as follows:

3       36. a. The commissioner **【**, in consultation with the council,**】**  
4 shall promulgate, in accordance with the provisions of the  
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
6 seq.), such regulations as are necessary for the prompt and effective  
7 implementation of the provisions and purposes of **【**P.L.2008, c.46  
8 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-  
9 329.2), including, but not limited to, provisions for the payment of  
10 any necessary administrative costs related to the assessment of  
11 properties and collection of any development fees by a  
12 municipality.

13       b. **【**Notwithstanding the authority granted to the commissioner  
14 herein, the council**】** The commissioner shall adopt and promulgate,  
15 in accordance with the provisions of the "Administrative Procedure  
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
17 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
18 al.), including but not limited to, regulations necessary for the  
19 establishment, implementation, review, monitoring, and  
20 enforcement of a municipal affordable housing trust fund and  
21 spending plan.

22 (cf: P.L.2008, c.46, s.36)

23

24       17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
25 read as follows:

26       38. a. Except as expressly provided in P.L.2008, c.46  
27 (C.52:27D-329.1 et al.),<sub>2</sub> including subsection b. of this section, any  
28 provision of a local ordinance which imposes a fee for the  
29 development of affordable housing upon a developer of non-  
30 residential property, including any and all development fee  
31 ordinances adopted in accordance with any regulations of the  
32 **【**Council on Affordable Housing**】** department, or any provision of  
33 an ordinance which imposes an obligation relating to the provision  
34 of housing affordable to **【**low and moderate income**】** low- and  
35 moderate-income households, or payment in-lieu of building as a  
36 condition of non-residential development, shall be void and of no  
37 effect. A provision of an ordinance which imposes a development  
38 fee which is not prohibited by any provision of P.L.2008, c.46  
39 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

40       b. No affordable housing obligation shall be imposed  
41 concerning a mixed use development that would result in an  
42 affordable housing obligation greater than that which would have  
43 been imposed if the residential portion of the mixed use  
44 development had been developed independently of the non-  
45 residential portion of the mixed use development.

46       c. Whenever the developer of a non-residential development  
47 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or

1 committed itself to make a financial or other contribution relating to  
2 the provision of housing affordable to low and moderate income  
3 households, the non-residential development fee authorized  
4 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
5 through the investment obligations made pursuant to P.L.1977,  
6 c.110 (C.5:12-1 et seq.).  
7 (cf: P.L.2008, c.46, s.38)

8  
9 18. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to  
10 read as follows:

11 39. The provisions of this section shall apply only to those  
12 developments for which a fee was imposed pursuant to sections 32  
13 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),  
14 known as the "Statewide Non-residential Development Fee Act."

15 a. A developer of a property that received preliminary site plan  
16 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),  
17 or final approval, pursuant to section 38 of P.L.1975, c.291  
18 (C.40:55D-50) prior to July 17, 2008 and that was subject to the  
19 payment of a nonresidential development fee prior to the enactment  
20 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a  
21 return of any moneys paid that represent the difference between  
22 moneys committed prior to July 17, 2008 and monies paid on or  
23 after that date.

24 b. A developer of a non-residential project that, prior to July  
25 17, 2008, has been referred to a planning board by the State, a  
26 governing body, or other public agency for review pursuant to  
27 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to  
28 the payment of a nonresidential development fee prior to the  
29 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be  
30 entitled to a return of any moneys paid that represent the difference  
31 between moneys committed prior to July 17, 2008 and moneys paid  
32 on or after that date.

33 c. If moneys are required to be returned under subsection a., b.  
34 or d. of this section, a claim shall be submitted, in writing, to the  
35 same entity to which the moneys were paid, within 120 days of the  
36 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity  
37 to whom the funds were paid shall promptly review all requests for  
38 returns, and the fees paid shall be returned to the claimant within 30  
39 days of receipt of the claim for return.

40 d. A developer of a non-residential project that paid a fee  
41 imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
42 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008  
43 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et  
44 al.), shall be entitled to the return of those moneys paid, provided  
45 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),  
46 as amended by P.L.2009, c.90 do not permit the imposition of a fee  
47 upon the developer of that non-residential property.

1 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
2 d. of this section, if, on the effective date of P.L.2009, c.90  
3 (C.52:27D-489a et al.), a municipality that has returned all or a  
4 portion of non-residential fees in accordance with subsection a. or  
5 b. of this section shall be reimbursed from the funds available  
6 through the appropriation made into the "New Jersey Affordable  
7 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
8 (C.52:27D-320.1) within 30 days of the municipality providing  
9 written notice to the Council on Affordable Housing. **】** (Deleted by  
10 amendment, P.L. , c. ) (pending before the Legislature as this  
11 bill)

12 f. A developer of a non-residential project that paid a fee  
13 imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
14 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010  
15 but prior to the effective date of P.L.2011, c.122, shall be entitled to  
16 the return of those monies paid, provided that said monies have not  
17 already been expended by the municipality on affordable housing  
18 projects, and provided that the provisions of section 37 of P.L.2008,  
19 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit  
20 the imposition of a fee upon the developer of that non-residential  
21 property. If moneys are eligible to be returned under this  
22 subsection, a claim shall be submitted, in writing, to the same entity  
23 to which the moneys were paid, within 120 days of the effective  
24 date of P.L.2011, c.122. The entity to whom the funds were paid  
25 shall promptly review all requests for returns, to ensure  
26 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the  
27 fees paid shall be returned to the claimant within 30 days of receipt  
28 of the claim for return.

29 (cf: P.L.2011, c.122, s.2)

30

31 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
32 read as follows:

33 3. a. There is established in, but not of, the department a Site  
34 Improvement Advisory Board, to devise statewide site improvement  
35 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
36 (C.40:55D-40.4). The board shall consist of the commissioner or  
37 **【his】** the commissioner's designee, who shall be a non-voting  
38 member of the board, the Director of the Division of **【Housing】**  
39 Codes and Standards in the Department of Community Affairs, who  
40 shall be a voting member of the board, the Executive Director of the  
41 New Jersey Housing and Mortgage Finance Agency, or the  
42 executive director's designee, who shall be a voting member of the  
43 board, and **【10】** nine other voting members, to be appointed by the  
44 commissioner. The other members shall include two professional  
45 planners, one of whom serves as a planner for a governmental entity  
46 or whose professional experience is predominantly in the public  
47 sector and who has worked in the public sector for at least the

1 previous five years and the other of whom serves as a planner in  
2 private practice and has particular expertise in private residential  
3 development and has been involved in private sector planning for at  
4 least the previous five years, and one representative each from:

- 5 (1) The New Jersey Society of Professional Engineers;
- 6 (2) The New Jersey Society of Municipal Engineers;
- 7 (3) The New Jersey Association of County Engineers;
- 8 (4) The New Jersey Federation of Planning Officials;
- 9 (5) **【The Council on Affordable Housing】** (Deleted by  
10 amendment, P.L. , c. (pending before the Legislature as this  
11 bill);
- 12 (6) The New Jersey Builders' Association;
- 13 (7) The New Jersey Institute of Technology;
- 14 (8) The New Jersey State League of Municipalities.

15 b. Among the members to be appointed by the commissioner  
16 who are first appointed, four shall be appointed for terms of two  
17 years each, four shall be appointed for terms of three years each,  
18 and two shall be appointed for terms of four years each. Thereafter,  
19 each appointee shall serve for a term of four years. Vacancies in  
20 the membership shall be filled in the same manner as original  
21 appointments are made, for the unexpired term. The **【commission】**  
22 **board** shall select a chair from among its members **【a chairman】**.  
23 Members may be removed by the commissioner for cause.

24 c. Board members shall serve without compensation, but may  
25 be entitled to reimbursement, from moneys appropriated or  
26 otherwise made available for the purposes of this act, for expenses  
27 incurred in the performance of their duties.

28 (cf: P.L.1993, c.32, s.3)

29

30 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
31 read as follows:

32 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

33 "Bonds" means any bonds, notes, interim certificates, debentures  
34 or other obligations issued by a municipality, county,  
35 redevelopment entity, or housing authority pursuant to P.L.1992,  
36 c.79 (C.40A:12A-1 et al.).

37 "Comparable, affordable replacement housing" means newly-  
38 constructed or substantially rehabilitated housing to be offered to a  
39 household being displaced as a result of a redevelopment project,  
40 that is affordable to that household based on its income under the  
41 guidelines established by the **【Council on Affordable Housing in**  
42 **the Department of Community Affairs】** New Jersey Housing and  
43 Mortgage Finance Agency for maximum affordable sales prices or  
44 maximum fair market rents, and that is comparable to the  
45 household's dwelling in the redevelopment area with respect to the  
46 size and amenities of the dwelling unit, the quality of the

1 neighborhood, and the level of public services and facilities offered  
2 by the municipality in which the redevelopment area is located.

3 "Development" means the division of a parcel of land into two or  
4 more parcels, the construction, reconstruction, conversion,  
5 structural alteration, relocation, or enlargement of any building or  
6 other structure, or of any mining, excavation or landfill, and any use  
7 or change in the use of any building or other structure, or land or  
8 extension of use of land, for which permission may be required  
9 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
10 (C.40:55D-1 et seq.).

11 "Electric vehicle charging station" means an electric component  
12 assembly or cluster of component assemblies designed specifically  
13 to charge batteries within electric vehicles by permitting the transfer  
14 of electric energy to a battery or other storage device in an electric  
15 vehicle.

16 "Governing body" means the body exercising general legislative  
17 powers in a county or municipality according to the terms and  
18 procedural requirements set forth in the form of government  
19 adopted by the county or municipality.

20 "Housing authority" means a housing authority created or  
21 continued pursuant to this act.

22 "Housing project" means a project, or distinct portion of a  
23 project, which is designed and intended to provide decent, safe and  
24 sanitary dwellings, apartments or other living accommodations for  
25 persons of **low and moderate income** low- and moderate-income;  
26 such work or undertaking may include buildings, land, equipment,  
27 facilities and other real or personal property for necessary,  
28 convenient or desirable appurtenances, streets, sewers, water  
29 service, parks, site preparation, gardening, administrative,  
30 community, health, recreational, educational, welfare or other  
31 purposes. The term "housing project" also may be applied to the  
32 planning of the buildings and improvements, the acquisition of  
33 property, the demolition of existing structures, the construction,  
34 reconstruction, alteration and repair of the improvements and all  
35 other work in connection therewith.

36 "Parking authority" means a public corporation created pursuant  
37 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
38 seq.), and authorized to exercise redevelopment powers within the  
39 municipality.

40 "Persons of **low and moderate income** low- and moderate-  
41 income" means persons or families who are, in the case of State  
42 assisted projects or programs, so defined by the **Council on**  
43 **Affordable Housing in the Department of Community Affairs** New  
44 Jersey Housing and Mortgage Finance Agency, or in the case of  
45 federally assisted projects or programs, defined as of **["low and**  
46 **very low income"]** "low- and very low-income" by the United  
47 States Department of Housing and Urban Development.

1 "Public body" means the State or any county, municipality,  
2 school district, authority or other political subdivision of the State.

3 "Public electric vehicle charging station" means an electric  
4 vehicle charging station located at a publicly available parking  
5 space.

6 "Public housing" means any housing for persons of [low and  
7 moderate income] low- and moderate-income owned by a  
8 municipality, county, the State or the federal government, or any  
9 agency or instrumentality thereof.

10 "Public hydrogen fueling station" means publicly available  
11 equipment to store and dispense hydrogen fuel to vehicles  
12 according to industry codes and standards.

13 "Publicly assisted housing" means privately owned housing  
14 which receives public assistance or subsidy, which may be grants or  
15 loans for construction, reconstruction, conservation, or  
16 rehabilitation of the housing, or receives operational or maintenance  
17 subsidies either directly or through rental subsidies to tenants, from  
18 a federal, State or local government agency or instrumentality.

19 "Publicly available parking space" means a parking space that is  
20 available to, and accessible by, the public and may include on-street  
21 parking spaces and parking spaces in surface lots or parking  
22 garages, but shall not include: a parking space that is part of, or  
23 associated with, a private residence; or a parking space that is  
24 reserved for the exclusive use of an individual driver or vehicle or  
25 for a group of drivers or vehicles, such as employees, tenants,  
26 visitors, residents of a common interest development, or residents  
27 of an adjacent building.

28 "Real property" means all lands, including improvements and  
29 fixtures thereon, and property of any nature appurtenant thereto or  
30 used in connection therewith, and every estate, interest and right,  
31 legal or equitable, therein, including terms for years and liens by  
32 way of judgment, mortgage or otherwise, and indebtedness secured  
33 by such liens.

34 "Redeveloper" means any person, firm, corporation or public  
35 body that shall enter into or propose to enter into a contract with a  
36 municipality or other redevelopment entity for the redevelopment or  
37 rehabilitation of an area in need of redevelopment, or an area in  
38 need of rehabilitation, or any part thereof, under the provisions of  
39 this act, or for any construction or other work forming part of a  
40 redevelopment or rehabilitation project.

41 "Redevelopment" means clearance, replanning, development and  
42 redevelopment; the conservation and rehabilitation of any structure  
43 or improvement, the construction and provision for construction of  
44 residential, commercial, industrial, public or other structures and  
45 the grant or dedication of spaces as may be appropriate or necessary  
46 in the interest of the general welfare for streets, parks, playgrounds,  
47 or other public purposes, including recreational and other facilities



1 incidental or appurtenant thereto, in accordance with a  
2 redevelopment plan.

3 "Redevelopment agency" means a redevelopment agency created  
4 pursuant to subsection a. of section 11 of P.L.1992, c.79  
5 (C.40A:12A-11) or established heretofore pursuant to the  
6 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
7 al.), repealed by this act, which has been permitted in accordance  
8 with the provisions of **[this act]** P.L.1992, c.79 (C.40A:12A-1 et  
9 seq.) to continue to exercise its redevelopment functions and  
10 powers.

11 "Redevelopment area" or "area in need of redevelopment" means  
12 an area determined to be in need of redevelopment pursuant to  
13 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
14 or determined heretofore to be a "blighted area" pursuant to  
15 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
16 determinations as made pursuant to the authority of Article VIII,  
17 Section III, paragraph 1 of the Constitution. A redevelopment area  
18 may include lands, buildings, or improvements which of themselves  
19 are not detrimental to the public health, safety or welfare, but the  
20 inclusion of which is found necessary, with or without change in  
21 their condition, for the effective redevelopment of the area of which  
22 they are a part.

23 "Redevelopment entity" means a municipality or an entity  
24 authorized by the governing body of a municipality pursuant to  
25 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
26 implement redevelopment plans and carry out redevelopment  
27 projects in an area in need of redevelopment, or in an area in need  
28 of rehabilitation, or in both.

29 "Redevelopment plan" means a plan adopted by the governing  
30 body of a municipality for the redevelopment or rehabilitation of all  
31 or any part of a redevelopment area, or an area in need of  
32 rehabilitation, which plan shall be sufficiently complete to indicate  
33 its relationship to definite municipal objectives as to appropriate  
34 land uses, public transportation and utilities, recreational and  
35 municipal facilities, and other public improvements; and to indicate  
36 proposed land uses and building requirements in the redevelopment  
37 area or area in need of rehabilitation, or both.

38 "Redevelopment project" means any work or undertaking  
39 pursuant to a redevelopment plan; such undertaking may include  
40 any buildings, land, including demolition, clearance or removal of  
41 buildings from land, equipment, facilities, or other real or personal  
42 properties which are necessary, convenient, or desirable  
43 appurtenances, such as but not limited to streets, sewers, utilities,  
44 parks, site preparation, landscaping, and administrative, community,  
45 health, recreational, educational, and welfare facilities, and zero-  
46 emission vehicle fueling and charging infrastructure.

47 "Rehabilitation" means an undertaking, by means of extensive  
48 repair, reconstruction or renovation of existing structures, with or

1 without the introduction of new construction or the enlargement of  
2 existing structures, in any area that has been determined to be in  
3 need of rehabilitation or redevelopment, to eliminate substandard  
4 structural or housing conditions and arrest the deterioration of that  
5 area.

6 "Rehabilitation area" or "area in need of rehabilitation" means  
7 any area determined to be in need of rehabilitation pursuant to  
8 section 14 of P.L.1992, c.79 (C.40A:12A-14).

9 "Zero-emission vehicle" means a vehicle certified as a zero  
10 emission vehicle pursuant to the California Air Resources Board  
11 zero emission vehicle standards for the applicable model year,  
12 including but not limited to, battery electric-powered vehicles and  
13 hydrogen fuel cell vehicles.

14 "Zero-emission vehicle fueling and charging infrastructure"  
15 means infrastructure to charge or fuel zero-emission vehicles,  
16 including but not limited to, public electric vehicle charging  
17 stations and public hydrogen fueling stations.

18 (cf: P.L.2021, c.168, s.1)

19

20 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
21 read as follows:

22 16. a. In order to carry out the housing purposes of this act, a  
23 municipality, county, or housing authority may exercise the  
24 following powers, in addition to those set forth in section 22 of  
25 P.L.1992, c.79 (C.40A:12A-22):

26 (1) Plan, construct, own, and operate housing projects; maintain,  
27 reconstruct, improve, alter, or repair any housing project or any part  
28 thereof; and for these purposes, receive and accept from the State or  
29 federal government, or any other source, funds or other financial  
30 assistance;

31 (2) Lease or rent any dwelling house, accommodations, lands,  
32 buildings, structures or facilities embraced in any housing project;  
33 and pursuant to the provisions of this act, establish and revise the  
34 rents and charges therefor;

35 (3) Acquire property pursuant to subsection i. of section 22 of  
36 P.L.1992, c.79 (C.40A:12A-22);

37 (4) Acquire, by condemnation, any land or building which is  
38 necessary for the housing project, pursuant to the provisions of the  
39 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

40 (5) Issue bonds in accordance with the provisions of section 29  
41 of P.L.1992, c.79 (C.40A:12A-29);

42 (6) Cooperate with any other municipality, private, county, State  
43 or federal entity to provide funds to the municipality or other  
44 governmental entity and to homeowners, tenant associations,  
45 nonprofit or private developers to acquire, construct, rehabilitate or  
46 operate publicly assisted housing, and to provide rent subsidies for  
47 persons of **low and moderate income** low- and moderate-income,

1 including the elderly, pursuant to applicable State or federal  
2 programs;

3 (7) Encourage the use of demand side subsidy programs such as  
4 certificates and vouchers for low-income families and promote the  
5 use of project based certificates which provide subsidies for units in  
6 newly constructed and substantially rehabilitated structures, and of  
7 tenant based certificates which subsidize rent in existing units;

8 (8) Cooperate with any State or federal entity to secure  
9 mortgage assistance for any person of **low or moderate income**  
10 low- or moderate-income;

11 (9) Provide technical assistance and support to nonprofit  
12 organizations and private developers interested in constructing **low**  
13 **and moderate income** low- and moderate-income housing;

14 (10) If it owns and operates public housing units, provide to the  
15 tenants public safety services, including protection against  
16 substance use disorder, and social services, including counseling  
17 and financial management, in cooperation with other agencies;

18 (11) Provide emergency shelters, transitional housing and  
19 supporting services to homeless families and individuals.

20 b. All housing projects, programs and actions undertaken  
21 pursuant to this act shall accord with the housing element of the  
22 master plan of the municipality within which undertaken, and with  
23 any fair share housing plan **filed by** of the municipality **with the**  
24 **Council on Affordable Housing, based upon the council's criteria**  
25 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
26 P.L.1985, c.222 (C.52:27D-301 et al.) **],** whether or not the  
27 municipality has petitioned for substantive certification of the  
28 **plan**.

29 (cf: P.L.2017, c.131, s.176)

30  
31 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
32 read as follows:

33 10. A municipality's housing element shall be designed to  
34 achieve the goal of access to affordable housing to meet present and  
35 prospective housing needs, with particular attention to **low and**  
36 **moderate income** low- and moderate-income housing, and shall  
37 contain at least:

38 a. An inventory of the municipality's housing stock by age,  
39 condition, purchase or rental value, occupancy characteristics, and  
40 type, including the number of units affordable to **low and moderate**  
41 **income** low- and moderate-income households and substandard  
42 housing capable of being rehabilitated, and in conducting this  
43 inventory the municipality shall have access, on a confidential basis  
44 for the sole purpose of conducting the inventory, to all necessary  
45 property tax assessment records and information in the assessor's  
46 office, including but not limited to the property record cards;

- 1        b. A projection of the municipality's housing stock, including  
2 the probable future construction of **low and moderate income**  
3 low- and moderate-income housing, for the next ten years, taking  
4 into account, but not necessarily limited to, construction permits  
5 issued, approvals of applications for development and probable  
6 residential development of lands;
- 7        c. An analysis of the municipality's demographic  
8 characteristics, including but not necessarily limited to, household  
9 size, income level and age;
- 10       d. An analysis of the existing and probable future employment  
11 characteristics of the municipality;
- 12       e. A determination of the municipality's present and prospective  
13 fair share for **low and moderate income** low- and moderate-  
14 income housing and its capacity to accommodate its present and  
15 prospective housing needs, including its fair share for **low and**  
16 **moderate income** low- and moderate-income housing, as  
17 established pursuant to section 3 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill);
- 19       f. A consideration of the lands that are most appropriate for  
20 construction of **low and moderate income** low- and moderate-  
21 income housing and of the existing structures most appropriate for  
22 conversion to, or rehabilitation for, **low and moderate income**  
23 low- and moderate-income housing, including a consideration of  
24 lands of developers who have expressed a commitment to provide  
25 **low and moderate income** low- and moderate-income housing;  
26 and
- 27       g. An analysis of the extent to which municipal ordinances and  
28 other local factors advance or detract from the goal of preserving  
29 multigenerational family continuity as expressed in the  
30 recommendations of the Multigenerational Family Housing  
31 Continuity Commission, adopted pursuant to paragraph (1) of  
32 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).  
33 (cf: P.L.2021, c.273, s.2)

34  
35       23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
36 to read as follows:

- 37       1. Any municipality that receives an adjustment of its  
38 prospective need obligations for the fourth round or subsequent  
39 rounds based on a lack of vacant land shall as part of the process of  
40 adopting and implementing its housing element and fair share plan  
41 identify sufficient parcels likely to redevelop during the current  
42 round of obligations to address at least 25 percent of the prospective  
43 need obligation that has been adjusted, and adopt realistic zoning  
44 that allows for such adjusted obligation, or demonstrate why the  
45 municipality is unable to do so. When computing a municipal  
46 adjustment regarding available land resources as part of the  
47 determination of a municipality's fair share of affordable housing,

1 the **【Council on Affordable Housing】** municipality, in filing a  
 2 housing element and fair share plan pursuant to subsection f. of  
 3 section 3 of P.L. , c. (C. and C. ) (pending before the  
 4 Legislature as this bill), shall exclude from designating , and the  
 5 process set forth pursuant to sections 3 and 4 of P.L. , c. (C.  
 6 and C. ) (pending before the Legislature as this bill) shall  
 7 confirm was correctly excluded, as vacant land:

8 (a) any land that is owned by a local government entity that as  
 9 of January 1, 1997, has adopted, prior to the institution of a lawsuit  
 10 seeking a builder's remedy or prior to the filing of a petition for  
 11 substantive certification of a housing element and fair share plan, a  
 12 resolution authorizing an execution of agreement that the land be  
 13 utilized for a public purpose other than housing;

14 (b) any land listed on a master plan of a municipality as being  
 15 dedicated, by easement or otherwise, for purposes of conservation,  
 16 park lands or open space and which is owned, leased, licensed, or in  
 17 any manner operated by a county, municipality or tax-exempt,  
 18 nonprofit organization including a local board of education, or by  
 19 more than one municipality by joint agreement pursuant to  
 20 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity  
 21 maintains such ownership, lease, license, or operational control of  
 22 such land;

23 (c) any vacant contiguous parcels of land in private ownership  
 24 of a size which would accommodate fewer than five housing units  
 25 **【if current standards of the council were applied】** based on  
 26 appropriate standards pertaining to housing density;

27 (d) historic and architecturally important sites listed on the State  
 28 Register of Historic Places or National Register of Historic Places  
 29 prior to the **【submission of the petition of substantive certification】**  
 30 date of filing a housing element and fair share plan pursuant to  
 31 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
 32 c. (C. or C. ) (pending before the Legislature as this  
 33 bill);

34 (e) agricultural lands when the development rights to these  
 35 lands have been purchased or restricted by covenant;

36 (f) sites designated for active recreation that are designated for  
 37 recreational purposes in the municipal master plan; and

38 (g) environmentally sensitive lands where development is  
 39 prohibited by any State or federal agency.

40 No municipality shall be required to utilize for affordable  
 41 housing purposes land that is excluded from being designated as  
 42 vacant land. (cf: P.L.2008, c.46, s.39)

44 24. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to  
 45 read as follows:

46 11. a. In adopting its housing element, the municipality may  
 47 provide for its fair share of **【low and moderate income】** low- and  
 48 moderate-income housing by means of any technique or

1 combination of techniques which provide a realistic opportunity for  
2 the provision of the fair share. The housing element shall contain  
3 an analysis demonstrating that it will provide such a realistic  
4 opportunity, and the municipality shall establish that its land use  
5 and other relevant ordinances have been revised to incorporate the  
6 provisions for **[low and moderate income]** low- and moderate-  
7 income housing. In preparing the housing element, the municipality  
8 shall consider the following techniques for providing **[low and**  
9 **moderate income]** low- and moderate-income housing within the  
10 municipality, as well as such other appropriate techniques as have  
11 been established through applicable precedent and may be  
12 **[published by the council or proposed]** employed by the  
13 municipality:

14 (1) Rezoning for densities necessary to assure the economic  
15 viability of any inclusionary developments, either through  
16 mandatory set-asides or density bonuses, as may be necessary to  
17 meet all or part of the municipality's fair share in accordance with  
18 **[the regulations of the council and]** the provisions of subsection h.  
19 of this section;

20 (2) Determination of the total residential zoning necessary to  
21 assure that the municipality's fair share is achieved;

22 (3) Determination of measures that the municipality will take to  
23 assure that **[low and moderate income]** low- and moderate-income  
24 units remain affordable to **[low and moderate income]** low- and  
25 moderate-income households for an appropriate period of not less  
26 than **[six years]** the period required by the regulations adopted by  
27 the Department of Community Affairs pursuant to section 21 of  
28 P.L.1985, c.222 (C.52:27D-321);

29 (4) A plan for infrastructure expansion and rehabilitation and  
30 conversion or redevelopment of unused or underutilized real  
31 property, including existing structures, if necessary to assure the  
32 achievement of the municipality's fair share of **[low and moderate**  
33 **income]** low- and moderate-income housing;

34 (5) Donation or use of municipally owned land or land  
35 condemned by the municipality for purposes of providing **[low and**  
36 **moderate income]** low- and moderate-income housing;

37 (6) Tax abatements for purposes of providing **[low and**  
38 **moderate income]** low- and moderate-income housing;

39 (7) Utilization of funds obtained from any State or federal  
40 subsidy toward the construction of **[low and moderate income]**  
41 low- and moderate-income housing;

42 (8) Utilization of municipally generated funds toward the  
43 construction of **[low and moderate income]** low- and moderate-  
44 income housing; and

45 (9) The purchase of privately owned real property used for  
46 residential purposes at the value of all liens secured by the property,

1 excluding any tax liens, notwithstanding that the total amount of  
2 debt secured by liens exceeds the appraised value of the property,  
3 pursuant to regulations promulgated by the Commissioner of  
4 Community Affairs pursuant to subsection b. of section 41 of  
5 P.L.2000, c.126 (C.52:27D-311.2).

6 b. The municipality may provide for a phasing schedule for the  
7 achievement of its fair share of **low and moderate income** low-  
8 and moderate-income housing.

9 c. (Deleted by amendment, P.L.2008, c.46)

10 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
11 require a municipality to raise or expend municipal revenues in  
12 order to provide **low and moderate income** low- and moderate-  
13 income housing.

14 e. When a municipality's housing element includes the  
15 provision of rental housing units in a community residence for the  
16 developmentally disabled , for the mentally ill, or for persons with  
17 head injuries, as those terms are defined in section 2 of P.L.1977,  
18 c.448 (C.30:11B-2), or in transitional housing, which will be  
19 affordable to persons of **low and moderate income** low- and  
20 moderate-income, and for which adequate measures to retain such  
21 affordability pursuant to paragraph (3) of subsection a. of this  
22 section are included in the housing element, those housing units  
23 shall be fully credited **as permitted under the rules of the council**  
24 towards the fulfillment of the municipality's fair share of **low and**  
25 **moderate income** low- and moderate-income housing. A  
26 municipality shall not credit transitional housing units towards more  
27 than 10 percent of the municipality's fair share obligation.

28 f. It having been determined by the Legislature that the  
29 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
30 a public purpose, a municipality or municipalities may utilize public  
31 monies to make donations, grants or loans of public funds for the  
32 rehabilitation of deficient housing units and the provision of new or  
33 substantially rehabilitated housing for **low and moderate income**  
34 low- and moderate-income persons, providing that any private  
35 advantage is incidental.

36 g. A municipality **which** that has received **substantive**  
37 **certification from the council** approval of its housing element and  
38 fair share plan for the current round, and **which** that has actually  
39 effected the construction of the affordable housing units it is  
40 obligated to provide, may amend its affordable housing element or  
41 zoning ordinances without **the approval of the council** losing  
42 immunity from builder's remedy litigation.

43 h. Whenever affordable housing units are proposed to be  
44 provided through an inclusionary development, a municipality shall  
45 provide, through its zoning powers, incentives to the developer,  
46 which shall include increased densities and reduced costs **in**,  
47 accordance with the regulations of the council and this subsection**in**.

1 i. **【The council, upon the application of a】** A municipality and  
2 a developer **【,】** may **【approve】** request a modification of a  
3 compliance certification involving reduced affordable housing set-  
4 asides or increased densities to ensure the economic feasibility of an  
5 inclusionary development , if any such application demonstrates  
6 how any shortfall in meeting the municipal fair share obligation will  
7 then be addressed. Such a request may be granted only if the  
8 municipality and developer have demonstrated that the project has  
9 been impacted by market conditions beyond their reasonable  
10 control.

11 j. A municipality may enter into an agreement with a  
12 developer or residential development owner to provide a preference  
13 for affordable housing to **【low and moderate income】** low- and  
14 moderate-income veterans who served in time of war or other  
15 emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-  
16 8.10), of up to 50 percent of the affordable units in that particular  
17 project. This preference shall be established in the applicant  
18 selection process for available affordable units so that applicants  
19 who are veterans who served in time of war or other emergency, as  
20 referenced in this subsection, and who apply within 90 days of the  
21 initial marketing period shall receive preference for the rental of the  
22 agreed-upon percentage of affordable units. After the first 90 days  
23 of the initial 120-day marketing period, if any of those units subject  
24 to the preference remain available, then applicants from the general  
25 public shall be considered for occupancy. Following the initial  
26 120-day marketing period, previously qualified applicants and  
27 future qualified applicants who are veterans who served in time of  
28 war or other emergency, as referenced in this subsection, shall be  
29 placed on a special waiting list as well as the general waiting list.  
30 The veterans on the special waiting list shall be given preference for  
31 affordable units, as the units become available, whenever the  
32 percentage of preference-occupied units falls below the agreed upon  
33 percentage. Any agreement to provide affordable housing  
34 preferences for veterans pursuant to this subsection shall not affect  
35 a municipality's ability to receive credit for the unit **【from the**  
36 **council, or its successor】**.

37 k. In the fourth round, and in subsequent rounds of affordable  
38 housing obligations, a municipality shall be able to receive one  
39 credit against its affordable housing obligation for each unit of low-  
40 or moderate-income housing, and shall not receive bonus credit for  
41 any particular type of low- or moderate-income housing, unless  
42 authority to obtain bonus credit is expressly provided pursuant to  
43 this section, or other sections of the "Fair Housing Act," P.L.1985,  
44 c.222 (C.52:27D-301 et al.). A municipality shall not receive more  
45 than one type of bonus credit for any unit, and a municipality shall  
46 not be permitted to satisfy more than 25 percent of its prospective  
47 need obligation in the fourth round or any subsequent round  
48 through the use of bonus credits. This subsection shall not be



1 construed to limit the ability of a municipality to receive a unit of  
2 credit for a low- or moderate-income housing unit that is subject to  
3 affordability controls that are scheduled to expire, but are extended  
4 in accordance with the Uniform Housing Affordability Controls  
5 promulgated by the New Jersey Housing and Mortgage Finance  
6 Agency, to the extent that this affordability control extension would  
7 otherwise generate this credit. As a part of a fair share plan and  
8 housing element adopted pursuant to subsection f. of section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
10 municipality shall:

11 (1) receive one unit of credit and one bonus credit for each unit  
12 of low- or moderate-income housing for individuals with special  
13 needs or permanent supportive housing, as those terms are defined  
14 in section 2 of P.L. 2004, c.70 (C.34:1B-21.24);

15 (2) receive one unit of credit and one-half bonus credit for each  
16 low- or moderate-income ownership unit created in partnership  
17 sponsorship with a non-profit housing developer;

18 (3) receive one unit of credit and one-half bonus credit for each  
19 unit of low- or moderate-income housing located within a one-half  
20 mile radius, or one-mile radius for projects located in a Garden  
21 State Growth Zone, as defined in section 2 of P.L.2011, c.149  
22 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port  
23 Authority Transit Corporation, or Port Authority Trans-Hudson  
24 Corporation rail, bus, or ferry station, including all light rail  
25 stations. For the purpose of this subparagraph, the distance from  
26 the bus, rail, or ferry station to a housing unit shall be measured  
27 from the closest point on the outer perimeter of the station,  
28 including any associated park-and-ride lot, to the closest point of  
29 the housing project property;

30 (4) receive one unit of credit and one-half bonus credit for a unit  
31 of age-restricted housing, provided that a bonus credit for age-  
32 restricted housing shall not be applied to more than 15 percent of  
33 the units of age-restricted housing constructed in compliance with  
34 the Uniform Housing Affordability Controls promulgated by the  
35 New Jersey Housing and Mortgage Finance Agency in a  
36 municipality that count towards the municipality's affordable  
37 housing obligation for any single 10-year round of affordable  
38 housing obligations;

39 (5) receive one unit of credit and one-half bonus credit for each  
40 unit of low- or moderate-income family housing with at least three  
41 bedrooms above the minimum number required by the bedroom  
42 distribution in a given development;

43 (6) receive one unit of credit and one-half bonus credit for a unit  
44 of low- or moderate-income housing constructed on land that is or  
45 was previously developed and utilized for retail, office, or  
46 commercial space;

47 (7) receive one unit of credit and one-half bonus credit for each  
48 existing low- or moderate-income rental housing unit for which

1 affordability controls are extended for a new term of affordability,  
2 in compliance with the Uniform Housing Affordability Controls  
3 promulgated by the New Jersey Housing and Mortgage Finance  
4 Agency, and the municipality contributes funding towards the costs  
5 necessary for this preservation;

6 (8) receive one unit of credit and one-half bonus credit for each  
7 unit of low- or moderate-income housing in a 100 percent  
8 affordable housing project toward which the municipality either  
9 contributes property without which the project would not be  
10 feasible, or makes contributions from the municipal affordable  
11 housing trust fund that cover no less than 10 percent of the project  
12 cost; and

13 (9) receive one unit of credit and one-half bonus credit for each  
14 unit of very low-income housing for families above the 13 percent  
15 of units required to be reserved for very low-income housing  
16 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

17 l. A municipality may not satisfy more than 25 percent of the  
18 affordable housing units, exclusive of any bonus credits, to address  
19 its prospective need affordable housing obligation through the  
20 creation of age-restricted housing. A municipality shall satisfy a  
21 minimum of 50 percent of the actual affordable housing units,  
22 exclusive of any bonus credits, created to address its prospective  
23 need affordable housing obligation through the creation of housing  
24 available to families with children and otherwise in compliance  
25 with the requirements and controls established pursuant to section  
26 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy  
27 a minimum of 25 percent of the actual affordable housing units,  
28 exclusive of any bonus credits, to address its prospective need  
29 affordable housing obligation, through rental housing, including at  
30 least half of that number available to families with children. All  
31 units referred to in this section shall otherwise be in compliance  
32 with the requirements and controls established pursuant to section  
33 21 of P.L.1985, c.222 (C.52:27D-321).

34 m. All parties shall be entitled to rely upon regulations on  
35 municipal credits, adjustments, and compliance mechanisms  
36 adopted by the Council on Affordable Housing unless those  
37 regulations are contradicted by statute, including but not limited to  
38 P.L. c. (C. ) (pending before the Legislature as this bill), or  
39 binding court decisions.

40 (cf: P.L.2013, c.6, s.1)

41  
42 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to  
43 read as follows:

44 6. **【The council】** A municipality may take such measures as are  
45 necessary to assure compliance with the adaptability requirements  
46 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
47 including the inspection of those units which are newly constructed  
48 and receive housing credit as provided under section 1 of P.L.2005,

1 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring  
2 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).  
3 No housing unit subject to the provisions of section 5 of P.L.2005,  
4 c.350 (C.52:27D-123.15) and to the provisions of the barrier free  
5 subcode adopted by the Commissioner of Community Affairs  
6 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
7 c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a  
8 municipal fair share plan unless the unit complies with the  
9 requirements set forth thereunder. If any units for which credit was  
10 granted in accordance with the provisions of P.L.2005, c.350  
11 (C.52:27D-311a et al.) are found not to conform to the requirements  
12 of P.L.2005, c.350 (C.52:27D-311a et al.), **【the council may】** any  
13 party representing the interests of households with disabilities may  
14 seek a modification to the approval of the municipal fair share plan  
15 to require the municipality to amend its fair share plan within 90  
16 days of 【receiving notice from the council】 such a finding, to  
17 address its fair share obligation pursuant to P.L.1985, c.222  
18 (C.52:27D-301 et al.). In the event that the municipality fails to  
19 amend its fair share plan within 90 days of **【receiving such notice,**  
20 **the council may revoke substantive certification】** such a finding, the  
21 municipality shall lose immunity to a builder's remedy for the  
22 portion of its obligation that is found not to conform to the  
23 requirements of P.L.2005, c.350 (C.52:27D-311a et al.).  
24 (cf: P.L.2005, c.350, s.6)  
25

26 26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
27 read as follows:

28 20. There is established in the Department of Community  
29 Affairs a separate trust fund, to be used for the exclusive purposes  
30 as provided in this section, and which shall be known as the "New  
31 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
32 lapsing, revolving trust fund, and all monies deposited or received  
33 for purposes of the fund shall be accounted for separately, by source  
34 and amount, and remain in the fund until appropriated for such  
35 purposes. The fund shall be the repository of all State funds  
36 appropriated for affordable housing purposes, including, but not  
37 limited to, the proceeds from the receipts of the additional fee  
38 collected pursuant to paragraph (2) of subsection a. of section 3 of  
39 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the  
40 Statewide non-residential development fees collected pursuant to  
41 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or  
42 reverting from municipal development trust funds, or other monies  
43 as may be dedicated, earmarked, or appropriated by the Legislature  
44 for the purposes of the fund. All references in any law, order, rule,  
45 regulation, contract, loan, document, or otherwise, to the  
46 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
47 mean the "New Jersey Affordable Housing Trust Fund." The  
48 department shall be permitted to utilize annually up to 7.5 percent

1 of the monies available in the fund for the payment of any  
2 necessary administrative costs related to the administration of the  
3 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
4 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
5 al.).

6 a. Except as permitted pursuant to subsection g. of this section,  
7 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
8 commissioner shall award grants or loans from this fund for  
9 housing projects and programs in municipalities whose housing  
10 elements have **received substantive certification from the council,**  
11 **obtained compliance certification pursuant to section 3 of P.L. , c.**  
12 **(C. ) (pending before the Legislature as this bill), or in**  
13  **municipalities receiving State aid pursuant to P.L.1978, c.14**  
14 **(C.52:27D-178 et seq.)** **], in municipalities subject to a builder's**  
15 **remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),**  
16 **or in receiving municipalities in cases where the council has**  
17 **approved a regional contribution agreement and a project plan**  
18 **developed by the receiving municipality].**

19 Of those monies deposited into the "New Jersey Affordable  
20 Housing Trust Fund" that are derived from municipal development  
21 fee trust funds, or from available collections of Statewide non-  
22 residential development fees, a priority for funding shall be  
23 established for projects in municipalities that have **petitioned the**  
24 **council for substantive] received compliance certification.**

25 Programs and projects in any municipality shall be funded only  
26 after receipt by the commissioner of a written statement in support  
27 of the program or project from the municipal governing body.

28 b. The commissioner shall establish rules and regulations  
29 governing the qualifications of applicants, the application  
30 procedures, and the criteria for awarding grants and loans and the  
31 standards for establishing the amount, terms, and conditions of each  
32 grant or loan.

33 c. For any period which the **commissioner** may  
34 approve, the commissioner may assist affordable housing programs  
35 **[which] that are [not] located in municipalities [whose housing**  
36 **elements have been granted substantive certification or which are**  
37 **not in furtherance of a regional contribution agreement] that have a**  
38 **pending request for compliance certification; provided that the**  
39 **affordable housing program will meet all or part of a municipal**  
40 **[low and moderate income] low- and moderate-income housing**  
41 **obligation.**

42 d. Amounts deposited in the "New Jersey Affordable Housing  
43 Trust Fund" shall be targeted to regions based on the region's  
44 percentage of the State's **[low and moderate income] low- and**  
45 **moderate-income housing need as determined [by the council]**  
46 **pursuant to the low- and moderate-income household growth over**  
47 **the prior 10 years, as calculated pursuant to section 6 of P.L. , c.**

1 (C. \_\_\_\_\_) (pending before the Legislature as this bill). Amounts in  
2 the fund shall be applied for the following purposes in designated  
3 neighborhoods:

4 (1) Rehabilitation of substandard housing units occupied or to  
5 be occupied by **low and moderate income** low- and moderate-  
6 income households;

7 (2) Creation of accessory **apartments** dwelling units to be  
8 occupied by **low and moderate income** low- and moderate-  
9 income households;

10 (3) Conversion of non-residential space to residential purposes;  
11 provided a substantial percentage of the resulting housing units are  
12 to be occupied by **low and moderate income** low- and moderate-  
13 income households;

14 (4) Acquisition of real property, demolition and removal of  
15 buildings, or construction of new housing that will be occupied by  
16 **low and moderate income** low- and moderate-income households,  
17 or any combination thereof;

18 (5) Grants of assistance to eligible municipalities for costs of  
19 necessary studies, surveys, plans, and permits; engineering,  
20 architectural, and other technical services; costs of land acquisition  
21 and any buildings thereon; and costs of site preparation, demolition,  
22 and infrastructure development for projects undertaken pursuant to  
23 an approved regional contribution agreement;

24 (6) Assistance to a local housing authority, nonprofit or limited  
25 dividend housing corporation, or association or a qualified entity  
26 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for  
27 rehabilitation or restoration of housing units which it administers  
28 which: (a) are unusable or in a serious state of disrepair; (b) can be  
29 restored in an economically feasible and sound manner; and (c) can  
30 be retained in a safe, decent, and sanitary manner, upon completion  
31 of rehabilitation or restoration; and

32 (7) Other housing programs for **low and moderate income**  
33 low- and moderate-income housing, including, without limitation,  
34 (a) infrastructure projects directly facilitating the construction of  
35 **low and moderate income** low- and moderate-income housing not  
36 to exceed a reasonable percentage of the construction costs of the  
37 **low and moderate income** low- and moderate-income housing to  
38 be provided and (b) alteration of dwelling units occupied or to be  
39 occupied by households of **low or moderate income** low- or  
40 moderate-income and the common areas of the premises in which  
41 they are located in order to make them accessible to persons with  
42 disabilities.

43 e. Any grant or loan agreement entered into pursuant to this  
44 section shall incorporate contractual guarantees and procedures by  
45 which the division **will** shall ensure that any unit of housing  
46 provided for **low and moderate income** low- and moderate-  
47 income households shall continue to be occupied by **low and**

1 moderate income] low- and moderate-income households for [at  
2 least 20 years] a period that conforms to the requirements of  
3 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
4 following the award of the loan or grant, except that the division  
5 may approve a guarantee for a period of less [than 20 years]  
6 duration where necessary to ensure project feasibility.

7 f. Notwithstanding the provisions of any other law, rule, or  
8 regulation to the contrary, in making grants or loans under this  
9 section, the department shall not require that tenants be certified as  
10 [low or moderate income] low- or moderate-income or that  
11 contractual guarantees or deed restrictions be in place to ensure  
12 continued [low and moderate income] low- and moderate-income  
13 occupancy as a condition of providing housing assistance from any  
14 program administered by the department, when that assistance is  
15 provided for a project of moderate rehabilitation if the project: (1)  
16 contains 30 or fewer rental units; and (2) is located in a census tract  
17 in which the median household income is 60 percent or less of the  
18 median income for the housing region in which the census tract is  
19 located, as determined for a three person household by the  
20 [council] department in accordance with the latest federal  
21 decennial census. A list of eligible census tracts shall be  
22 maintained by the department and shall be adjusted upon  
23 publication of median income figures by census tract after each  
24 federal decennial census.

25 g. In addition to other grants or loans awarded pursuant to this  
26 section, and without regard to any limitations on such grants or  
27 loans for any other purposes herein imposed, the commissioner  
28 shall annually allocate such amounts as may be necessary in the  
29 commissioner's discretion, and in accordance with section 3 of  
30 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
31 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
32 287.1 et al.). Such rental assistance grants shall be deemed  
33 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
34 301 et al.), in order to meet the housing needs of certain [low  
35 income] low-income households who may not be eligible to occupy  
36 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301  
37 et al.).

38 h. The department and the State Treasurer shall submit the  
39 "New Jersey Affordable Housing Trust Fund" for an audit annually  
40 by the State Auditor or State Comptroller, at the discretion of the  
41 Treasurer. In addition, the department shall prepare an annual  
42 report for each fiscal year, and submit it by November 30th of each  
43 year to the Governor and the Legislature, and the Joint Committee  
44 on Housing Affordability, or its successor, and post the information  
45 to its [web site] Internet website, of all activity of the fund,  
46 including details of the grants and loans by number of units, number  
47 and income ranges of recipients of grants or loans, location of the

1 housing renovated or constructed using monies from the fund, the  
2 number of units upon which affordability controls were placed, and  
3 the length of those controls. The report also shall include details  
4 pertaining to those monies allocated from the fund for use by the  
5 State rental assistance program pursuant to section 3 of P.L.2004,  
6 c.140 (C.52:27D-287.3) and subsection g. of this section.

7 i. The commissioner may award or grant the amount of any  
8 appropriation deposited in the "New Jersey Affordable Housing  
9 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
10 320.1) to municipalities pursuant to the provisions of section 39 of  
11 P.L.2009, c.90 (C.40:55D-8.8).

12 (cf: P.L.2017, c.131, s.200)

13  
14 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
15 read as follows:

16 21. The agency shall establish affordable housing programs to  
17 assist municipalities in meeting the obligation of developing  
18 communities to provide **low and moderate income** low- and  
19 moderate-income housing.

20 a. Of the bond authority allocated to it under section 24 of  
21 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
22 reasonable period of time established by its board, no less than  
23 **25%** 25 percent to be used in conjunction with housing to be  
24 constructed or rehabilitated with assistance under **this act**  
25 P.L.1985, c.222 (C.52:27D-301 et al.).

26 b. The agency shall to the extent of available funds, award  
27 assistance to affordable housing programs located in municipalities  
28 whose housing elements have **received substantive** obtained  
29 compliance certification **from the council** , or which have been  
30 subject to a builder's remedy **or which are in furtherance of a**  
31 **regional contribution agreement approved by the council**. During  
32 **the first 12 months from the effective date of this act and for** any  
33 **additional** period which the **council** agency may approve, the  
34 agency may assist affordable housing programs **which are not**  
35 located in municipalities whose housing elements have been granted  
36 substantive certification or which are not in furtherance of a  
37 regional contribution agreement **that have a pending request for**  
38 compliance certification; provided the affordable housing program  
39 will meet all or in part a municipal **low and moderate income**  
40 low- and moderate-income housing obligation.

41 c. Assistance provided pursuant to this section may take the  
42 form of grants or awards to municipalities, prospective home  
43 purchasers, housing sponsors as defined in P.L.1983, c.530  
44 (C.55:14K-1 et seq.), or as contributions to the issuance of  
45 mortgage revenue bonds or multi-family housing development  
46 bonds which have the effect of achieving the goal of producing  
47 affordable housing.

- 1 d. Affordable housing programs which may be financed or  
2 assisted under this provision may include, but are not limited to:
- 3 (1) Assistance for home purchase and improvement including  
4 interest rate assistance, down payment and closing cost assistance,  
5 and direct grants for principal reduction;
- 6 (2) Rental programs including loans or grants for developments  
7 containing **low and moderate income** low- and moderate-income  
8 housing, moderate rehabilitation of existing rental housing,  
9 congregate care and retirement facilities;
- 10 (3) Financial assistance for the conversion of nonresidential  
11 space to residences;
- 12 (4) Other housing programs for **low and moderate income**  
13 low- and moderate-income housing, including infrastructure  
14 projects directly facilitating the construction of **low and moderate**  
15 **income** low- and moderate-income housing; and
- 16 (5) Grants or loans to municipalities, housing sponsors and  
17 community organizations to encourage development of innovative  
18 approaches to affordable housing, including:
- 19 (a) Such advisory, consultative, training and educational  
20 services as will assist in the planning, construction, rehabilitation  
21 and operation of housing; and
- 22 (b) Encouraging research in and demonstration projects to  
23 develop new and better techniques and methods for increasing the  
24 supply, types and financing of housing and housing projects in the  
25 State.
- 26 e. The agency shall establish procedures and guidelines  
27 governing the qualifications of applicants, the application  
28 procedures and the criteria for awarding grants and loans for  
29 affordable housing programs and the standards for establishing the  
30 amount, terms and conditions of each grant or loan.
- 31 f. **In consultation with the council, the** The agency , in  
32 consultation with the department, shall establish requirements and  
33 controls to **insure** ensure the maintenance of housing assisted  
34 under **this act** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable  
35 to **low and moderate income** low- and moderate-income  
36 households for a period of not less than 40 years for rental units and  
37 20 years for for-sale units; provided that the agency **may establish**  
38 a shorter period upon a determination that the economic feasibility  
39 of the program is jeopardized by the requirement and the public  
40 purpose served by the program outweighs the shorter period **may**  
41 update or amend any controls previously adopted by the agency, in  
42 consultation with the Council on Affordable Housing, prior to the  
43 effective date of P.L. , c. (C. ) (pending before the  
44 Legislature as this bill), provided that the requirements and controls  
45 shall, at a minimum, be consistent with the controls as in effect  
46 immediately prior to the effective date of P.L. , c. (C. )  
47 (pending before the Legislature as this bill), including, but not



1 limited to, any requirements concerning bedroom distributions,  
2 affordability averages, and affirmative marketing. The controls  
3 may include, among others, requirements for recapture of assistance  
4 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et  
5 al.) or restrictions on return on equity in the event of failure to meet  
6 the requirements of the program. With respect to rental housing  
7 financed by the agency pursuant to **【this act】** P.L.1985, c.222  
8 (C.52:27D-301 et al.) or otherwise which promotes the provision or  
9 maintenance of **【low and moderate income】** low- and moderate-  
10 income housing, the agency may waive restrictions on return on  
11 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)  
12 which is gained through the sale of the property or of any interest in  
13 the property or sale of any interest in the housing sponsor. The  
14 agency shall promulgate updated regulations no later than nine  
15 months following the effective date of P.L. , c. (C. )  
16 (pending before the Legislature as this bill). All parties may  
17 continue to rely on regulations previously adopted by the agency  
18 pursuant to the authority provided by this section as in effect  
19 immediately prior to the effective date of P.L. , c. (C. )  
20 (pending before the Legislature as this bill) until new rules and  
21 regulations are adopted by the agency. Notwithstanding the  
22 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
23 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation  
24 with department, may adopt, immediately, upon filing with the  
25 Office of Administrative Law, said regulations, which shall be  
26 effective for a period not to exceed one year from the date of the  
27 filing. The agency shall thereafter amend, adopt, or readopt the  
28 regulations in accordance with the requirements of P.L.1968, c.410  
29 (C.52:14B-1 et seq.).

30 g. The agency may establish affordable housing programs  
31 through the use or establishment of subsidiary corporations or  
32 development corporations as provided in P.L.1983, c.530  
33 (C.55:14K-1 et seq.). The subsidiary corporations or development  
34 corporations shall be eligible to receive funds provided under **【this**  
35 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted  
36 purpose.

37 h. The agency shall provide assistance, through its bonding  
38 powers or in any other manner within its powers, to the grant and  
39 loan program established pursuant to section 20 of P.L.1985, c.222  
40 (C.52:27D-320).

41 i. (1) The department shall promulgate processes and standards  
42 for the certification of administrative agents and municipal housing  
43 liaisons in the State, as well as standards for measuring  
44 performance of and enforcing compliance by administrative agents  
45 and municipal housing liaisons in implementing the affordable  
46 housing requirements and controls established pursuant to  
47 subsection f. of this section.

1       (2) Administrative agents shall be responsible for implementing  
2 the requirements and controls set by the regulations promulgated  
3 pursuant to subsection (f) of this section. The department may  
4 bring via summary proceeding any findings of violation of the  
5 responsibilities set forth in this section before a county level  
6 housing judge, to docket the violation and issue corrective orders  
7 and levy fines.

8       (3) Municipal housing liaisons shall be responsible for  
9 monitoring administrative agents within their municipality's  
10 jurisdiction to ensure compliance with the requirements and  
11 controls set by regulation under subsection f. of this section.

12       (4) Municipal housing liaisons, the department, and interested  
13 parties may bring a challenge before a county level housing judge to  
14 determine whether properties subject to the regulations set forth by  
15 this section are out of compliance with the regulations. A finding  
16 of deliberate noncompliance may result in the department removing  
17 the administrative agent's certification.

18       (5) A County level housing judge may issue fines and order  
19 corrective actions for violations and may consider patterns of  
20 violations in determining whether a municipality is meeting its  
21 obligations under the compliance certification established by  
22 section 3 of P.L. , c. (C. ) (pending before the Legislature  
23 as this bill).

24       (6) Notwithstanding the provisions of the "Administrative  
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
26 contrary, the department may adopt, immediately, upon filing with  
27 the Office of Administrative Law, regulations to implement the  
28 provisions of this subsection, which shall be effective for a period  
29 not to exceed one year from the date of the filing. The department  
30 shall thereafter amend, adopt, or readopt the regulations in  
31 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
32 et seq.).

33 (cf: P.L.2004, c.140, s.5)

34  
35       28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
36 to read as follows:

37       19. Notwithstanding any rules of the New Jersey Housing and  
38 Mortgage Finance Agency to the contrary, the allocation of **low**  
39 **income** low-income tax credits shall be made by the agency to the  
40 full extent such credits are permitted to be allocated under federal  
41 law, including allocations of **[4]** four percent or **[9]** nine percent  
42 federal **low income** low-income tax credits, and including  
43 allocations allowable for partial credits. The affordable portion of  
44 any mixed income or mixed use development that is part of a fair  
45 share housing plan **[approved by the council, or]** that has obtained  
46 compliance certification, including a court-approved judgment of  
47 repose or compliance, including, but not limited to, a development  
48 that has received a density bonus, shall be permitted to receive

1 allocations of **low income** low-income tax credits, provided that  
2 the applicant can conclusively demonstrate that the market rate  
3 residential or commercial units are unable to internally subsidize  
4 the affordable units, and the affordable units are developed  
5 contemporaneously with the commercial or market rate residential  
6 units.  
7 (cf: P.L.2008, c.46, s.19)  
8

9 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
10 read as follows:

11 7. **The council shall coordinate and review the housing**  
12 **elements as filed pursuant to section 11 of P.L.1985, c.222**  
13 **(C.52:27D-311), and the housing activities under section 20 of**  
14 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**  
15 **Housing elements and fair share plans adopted pursuant to section 3**  
16 **of P.L. , c. (C. ) (pending before the Legislature as this bill)**  
17 **shall ensure that at least 13 percent of the housing units made**  
18 **available for occupancy by low-income and moderate income**  
19 **moderate-income households to address a municipality's**  
20 **prospective need obligation will be reserved for occupancy by very**  
21 **low income households, as that term is defined pursuant to section 4**  
22 **of P.L.1985, c.222 (C.52:27D-304), with at least half of such units**  
23 **made available for families with children. The 13 percent shall**  
24 **count towards the minimum 50 percent of the housing units**  
25 **required to be made available for occupancy by low-income**  
26 **households to address a municipality's prospective need obligation.**  
27 **Nothing in this section shall require that a specific percentage of the**  
28 **units in any specific project be reserved as very **low income** low-**  
29 **income housing; provided, however, that a municipality shall not**  
30 **receive bonus credits for the provision of housing units reserved for**  
31 **occupancy by very **low income** low-income households unless**  
32 **the 13 percent target has been exceeded within that municipality **.****  
33 **The council shall coordinate all efforts to meet the goal of this**  
34 **section in a manner that will result in a balanced number of housing**  
35 **units being reserved for very low income households throughout all**  
36 **housing regions. For the purposes of this section, housing activities**  
37 **under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include**  
38 **any project-based assistance provided from the "New Jersey**  
39 **Affordable Housing Trust Fund" pursuant to P.L.2004, c.140**  
40 **(C.52:27D-287.1 et al.), regardless of whether the housing activity**  
41 **is counted toward the municipal obligation under the "Fair Housing**  
42 **Act," P.L.1985, c.222 (C.52:27D-301 et al.) **], and that the agency****  
43 **shall update the regulations adopted pursuant to section 21 of**  
44 **P.L.1985, c.222 (C.52:27D-321) to replace any requirements for**  
45 **very low-income housing inconsistent with the percentages and**  
46 **definitions established pursuant to P.L. , c. (C. ) (pending**

1 before the Legislature as this bill) with the percentage and  
2 definition specified in this section.

3 (cf: P.L.2008, c.46, s.7)

4

5 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
6 read as follows:

7 8. a. **【The council may authorize a】** (1) A municipality that is  
8 in the process of seeking compliance certification, has **【petitioned**  
9 **for substantive】** obtained compliance certification, or that has been  
10 so authorized by a court of competent jurisdiction, and which has  
11 adopted a municipal development fee ordinance shall be authorized  
12 to impose and collect development fees from developers of  
13 residential property, in accordance with rules promulgated by the  
14 **【council】** department. Each amount collected shall be deposited  
15 and shall be accounted for separately, by payer and date of deposit.

16 (2) No later than 90 days following the enactment of P.L. , c.  
17 (C. ) (pending before the Legislature as this bill), any  
18 municipality that is or has been authorized to impose and collect  
19 development fees from developers of residential property, or  
20 payments in lieu of constructing affordable housing, shall provide  
21 the Department of Community Affairs with a detailed accounting of  
22 all such fees that have been collected and expended since the  
23 inception of the municipal authorization to collect the fees.

24 (3) Beginning with the year after the enactment of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), by January  
26 15, every municipality that is or has been authorized to impose and  
27 collect development fees from developers of residential property, or  
28 payments in lieu of constructing affordable housing, shall provide  
29 the Department of Community Affairs with a detailed accounting of  
30 all such fees that have been collected and expended the previous  
31 year.

32 (4) A municipality may not spend or commit to spend any  
33 affordable housing development fees, including Statewide non-  
34 residential fees collected and deposited into the municipal  
35 affordable housing trust fund, without first obtaining the 【council's】  
36 approval of the expenditure as part of its compliance certification or  
37 by the department. A municipality shall include in its housing  
38 element and fair share plan adopted pursuant to section 3 of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill) a  
40 spending plan for current funds in the municipal affordable housing  
41 trust fund and projected funds through the current round. Review  
42 of that spending plan for consistency with applicable law and the  
43 municipality's Housing Element and Fair Share Plan shall be part of  
44 the process specified in section 3 of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill). The 【council】 department shall  
46 promulgate updated regulations no later than nine months following  
47 the effective date of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) regarding the establishment, administration,  
2 reporting, and enforcement of the expenditure of affordable housing  
3 development fees by municipalities, which shall include  
4 establishing an expedited process for approving spending plan  
5 expenditures for emergent opportunities to create affordable  
6 housing after a municipality has obtained compliance certification  
7 and procedures for monitoring the collection and expenditure of  
8 trust funds. The department shall develop and publish on the  
9 department's Internet website a detailed summary of the municipal  
10 affordable housing trust fund expenditures for each municipality,  
11 and shall update each summary on an annual basis. As part of the  
12 regulations adopted pursuant to this section and section 10 of  
13 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt  
14 reporting requirements applicable to municipal affordable housing  
15 trust funds to facilitate fulfillment of the department's obligations  
16 pursuant to this section. Municipalities may continue to rely on  
17 regulations on development fees and spending plans previously  
18 adopted by the council until new rules and regulations are adopted  
19 by the department. The [council] department shall have  
20 [exclusive] jurisdiction regarding the enforcement of these  
21 regulations, provided that any municipality which is not in  
22 compliance with the regulations adopted by the [council]  
23 department may be subject to forfeiture of any or all funds  
24 remaining within its municipal trust fund. Any funds so forfeited  
25 shall be deposited into the "New Jersey Affordable Housing Trust  
26 Fund" established pursuant to section 20 of P.L.1985, c.222  
27 (C.52:27D-320).

28 b. A municipality shall deposit all fees collected, whether or  
29 not such collections were derived from fees imposed upon non-  
30 residential or residential construction into a trust fund dedicated to  
31 those purposes as required under this section, and such additional  
32 purposes as may be approved by the [council] department.

33 c. (1) A municipality may only spend development fees for an  
34 activity approved by the [council] department to address the  
35 municipal fair share obligation, or approved as part of compliance  
36 certification.

37 (2) Municipal development trust funds shall not be expended  
38 unless the municipality has immunity from builder's remedy  
39 litigation at the time of the expenditure, and shall not be expended:

40 (a) to reimburse municipalities for activities which occurred  
41 prior to the authorization of a municipality to collect development  
42 fees; or

43 (b) (i) on administrative costs, attorney fees or court costs to  
44 obtain a judgment of repose; (ii) to contest a determination of the  
45 municipality's fair share obligation; or (iii) on costs of any  
46 challenger in connection to a challenge to the municipality's  
47 obligation, housing element, or fair share plan.

1 (3) A municipality shall set aside a portion of its development  
2 fee trust fund for the purpose of providing affordability assistance  
3 to **[low and moderate income]** low- and moderate-income  
4 households in affordable units included in a municipal fair share  
5 plan, in accordance with rules of the **[council]** department.

6 (a) Affordability assistance programs may include down  
7 payment assistance, security deposit assistance, low interest loans,  
8 common maintenance expenses for units located in condominiums,  
9 rental assistance, and any other program authorized by the  
10 **[council]** department.

11 (b) Affordability assistance to households earning 30 percent or  
12 less of median income may include buying down the cost of **[low**  
13 **income]** low-income units in a municipal fair share plan to make  
14 them affordable to households earning 30 percent or less of median  
15 income. The use of development fees in this manner shall not  
16 entitle a municipality to bonus credits except as may **[be provided**  
17 **by the rules of the council]** otherwise be allowed by applicable  
18 precedent.

19 (4) A municipality may contract with a private or public entity  
20 to administer any part of its housing element and fair share plan,  
21 including the requirement for affordability assistance, or any  
22 program or activity for which the municipality expends  
23 development fee proceeds, in accordance with rules of the  
24 **[council]** department.

25 (5) Not more than 20 percent of the revenues collected from  
26 development fees shall be expended on administration, in  
27 accordance with rules of the **[council]** department. Such  
28 administration may include expending a portion of its affordable  
29 housing trust fund on actions and efforts reasonably related to the  
30 determination of its fair share obligation and the development of its  
31 housing element and fair share plan pursuant to paragraphs (1) and  
32 (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending  
33 before the Legislature as this bill), and for expenses that are  
34 reasonably necessary for compliance with the processes of the  
35 program, including but not limited to, the costs to the municipality  
36 of resolving a challenge under the program.

37 d. The **[council]** department shall establish a time by which all  
38 development fees collected within a calendar year shall be  
39 expended; provided, however, that all fees shall be committed for  
40 expenditure within four years from the date of collection. A  
41 municipality that fails to commit to expend the balance required in  
42 the development fee trust fund by the time set forth in this section  
43 shall be required by the council to transfer the remaining unspent  
44 balance at the end of the four-year period to the "New Jersey  
45 Affordable Housing Trust Fund," established pursuant to section 20  
46 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46

1 (C.52:27D-329.1 et al.), to be used in the housing region of the  
2 transferring municipality for the authorized purposes of that fund.

3 e. Notwithstanding any provision of this section, or regulations  
4 of the **【council】 department**, a municipality shall not collect a  
5 development fee from a developer whenever that developer is  
6 providing for the construction of affordable units, either on-site or  
7 elsewhere within the municipality.

8 This section shall not apply to the collection of a Statewide  
9 development fee imposed upon non-residential development  
10 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
11 **【et seq.】 through C.40:55D-8.7**) by the State Treasurer, when such  
12 collection is not authorized to be retained by a municipality.

13 (cf: P.L.2008, c.46, s.8)

14

15 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended  
16 to read as follows:

17 10. a. The **【council】 department** shall maintain on its Internet  
18 website, and also publish on **【a regular】 an annual** basis, an up-to-  
19 date municipal status report **【concerning the petitions for**  
20 substantive certification of each municipality that has submitted to  
21 the council's jurisdiction, and shall collect and publish **】 based on its**  
22 collection and publication of information concerning the number  
23 affordable of housing units actually constructed, construction starts,  
24 certificates of occupancy granted, **【rental units maintained, and the**  
25 number of housing units transferred or sold within the previous 12-  
26 month period **】 the start and expiration dates of deed restrictions,**  
27 and residential and non-residential development fees collected and  
28 expended, including purposes and amounts of such expenditures,  
29 along with the current balance in the municipality's affordable  
30 housing trust funds. With respect to units actually constructed, the  
31 information shall specify the characteristics of the housing,  
32 including housing type, tenure, affordability level, number of  
33 bedrooms, date and expiration of affordability controls, and whether  
34 occupancy is reserved for families, senior citizens, or other special  
35 populations. **【No later than 60 months after the effective date of**  
36 P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require  
37 each municipality, as a condition of substantive certification, to  
38 provide, in a standardized electronic media format as determined by  
39 the council, the details of the fair share plan as adopted by the  
40 municipality and approved by the council. The council shall  
41 publish and maintain such approved plans on its website. **】**

42 b. (1) No later than 90 days following the enactment of P.L. \_\_\_\_\_,  
43 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), each  
44 municipality shall provide the department with the information  
45 necessary to comply with this section.

46 (2) Beginning with the year after the enactment of P.L. \_\_\_\_\_, c.  
47 (C. \_\_\_\_\_) (pending before the Legislature as this bill), by January

1 15, each municipality shall provide the department with the  
2 information necessary to comply with this section.

3 c. The department may adopt, pursuant to the "Administrative  
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
5 regulations as may be necessary to effectuate the provisions of this  
6 section, including rules and regulations to ensure that municipalities  
7 and developers report any information as may be necessary for the  
8 department to fulfill its obligations pursuant to this section.

9 (cf: P.L.2008, c.46, s.10)

10

11 32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended  
12 to read as follows:

13 18. a. Notwithstanding any rules **【of the council】** to the  
14 contrary, for developments consisting of newly-constructed  
15 residential units located, or to be located, within the jurisdiction of  
16 any regional planning entity required to adopt a master plan or  
17 comprehensive management plan pursuant to statutory law,  
18 including the New Jersey Meadowlands Commission pursuant to  
19 subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the  
20 Pinelands Commission pursuant to section 7 of the "Pinelands  
21 Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth  
22 Economic Revitalization Planning Authority pursuant to section 5  
23 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands  
24 Water Protection and Planning Council pursuant to section 11 of  
25 P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards  
26 formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77),  
27 there shall be required to be reserved for occupancy by **【low or**  
28 **moderate income】** low- or moderate-income households at least 20  
29 percent of the residential units constructed **【, to the extent this is**  
30 **economically feasible】** with affordability controls as required  
31 pursuant to the rules and regulations of the agency.

32 b. Subject to the provisions of subsection d. of this section, a  
33 developer of a project consisting of newly-constructed residential  
34 units being financed in whole or in part with State funds, including,  
35 but not limited to, transit villages designated by the Department of  
36 Transportation and units constructed on State-owned property, shall  
37 be required to reserve at least 20 percent of the residential units  
38 constructed for occupancy by **【low or moderate income】** low- or  
39 moderate-income households, as those terms are defined in section  
40 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
41 required under the rules of the **【council, unless the municipality in**  
42 **which the property is located has received substantive certification**  
43 **from the council and such a reservation is not required under the**  
44 **approved affordable housing plan, or the municipality has been**  
45 **given a judgment of repose or a judgment of compliance by the**  
46 **court, and such a reservation is not required under the approved**  
47 **affordable housing plan】** agency.



1 c. [(1) The Legislature recognizes that regional planning  
2 entities are appropriately positioned to take a broader role in the  
3 planning and provision of affordable housing based on regional  
4 planning considerations. In recognition of the value of sound  
5 regional planning, including the desire to foster economic growth,  
6 create a variety and choice of housing near public transportation,  
7 protect critical environmental resources, including farmland and  
8 open space preservation, and maximize the use of existing  
9 infrastructure, there is created a new program to foster regional  
10 planning entities.

11 (2) The regional planning entities identified in subsection a. of  
12 this section shall identify and coordinate regional affordable  
13 housing opportunities in cooperation with municipalities in areas  
14 with convenient access to infrastructure, employment opportunities,  
15 and public transportation. Coordination of affordable housing  
16 opportunities may include methods to regionally provide housing in  
17 line with regional concerns, such as transit needs or opportunities,  
18 environmental concerns, or such other factors as the council may  
19 permit; provided, however, that such provision by such a regional  
20 entity may not result in more than a 50 percent change in the fair  
21 share obligation of any municipality; provided that this limitation  
22 shall not apply to affordable housing units directly attributable to  
23 development by the New Jersey Sports and Exposition Authority  
24 within the New Jersey Meadowlands District.

25 (3) In addition to the entities identified in subsection a. of this  
26 section, the Casino Reinvestment Development Authority, in  
27 conjunction with the Atlantic County Planning Board, shall identify  
28 and coordinate regional affordable housing opportunities directly  
29 attributable to Atlantic City casino development, which may be  
30 provided anywhere within Atlantic County, subject to the  
31 restrictions of paragraph (4) of this subsection.

32 (4) The coordination of affordable housing opportunities by  
33 regional entities as identified in this section shall not include  
34 activities which would provide housing units to be located in those  
35 municipalities that are eligible to receive aid under the "Special  
36 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or  
37 are coextensive with a school district which qualified for  
38 designation as a "special needs district" pursuant to the "Quality  
39 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at  
40 any time in the last 10 years have been qualified to receive  
41 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall  
42 within the jurisdiction of any of the regional entities specified in  
43 subsection a. of this section.】 (Deleted by amendment,  
44 P.L. , c. ) (pending before the Legislature as this bill)

45 d. Notwithstanding the provisions of subsection b. of this  
46 section, or any other law or regulation to the contrary, for purposes  
47 of mixed use projects or qualified residential projects in which a  
48 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-

1 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90  
2 (C.34:1B-209.3), or both, an "eligible municipality," as defined in  
3 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of  
4 deciding the percentage of newly-constructed residential units  
5 within the project, up to 20 percent of the total, required to be  
6 reserved for occupancy by **low or moderate income** low- or  
7 moderate-income households. For a mixed use project or a  
8 qualified residential project that has received preliminary or final  
9 site plan approval prior to the effective date of P.L.2011, c.89, the  
10 percentage shall be deemed to be the percentage, if any, of units  
11 required to be reserved for **low or moderate income** low- or  
12 moderate-income households in accordance with the terms and  
13 conditions of such approval.  
14 (cf: P.L.2011, c.89, s.5)

15  
16 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
17 read as follows:

18 3. As used in this act:

19 "Affordable Home Ownership Opportunities Bonds" means any  
20 bonds of the New Jersey Housing and Mortgage Finance Agency  
21 that provide funds to facilitate the provisions of this act.

22 "Agency" means the New Jersey Housing and Mortgage Finance  
23 Agency.

24 "Annual income" means total income, from all sources, during  
25 the last full calendar year preceding the filing of an application for a  
26 loan pursuant to this act.

27 "Bonds" means bonds, notes or any other form of evidence of  
28 indebtedness of the agency, bearing either a fixed rate or a variable  
29 rate of interest, issued by the agency.

30 "Eligible project" means a project for the creation of low or  
31 moderate income housing which meets the standards of eligibility  
32 for loans under the program created by this act.

33 "Eligible purchaser" means a purchaser of a dwelling unit in an  
34 eligible project to whom a loan may be made under the program  
35 pursuant to section 5 of this act.

36 "Fund" means the Affordable Home Ownership Opportunities  
37 Fund established by section 5 of this act.

38 "Housing region" means a housing region as defined in  
39 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
40 c.222 (C.52:27D-304) and determined **by the Council on**  
41 **Affordable Housing** pursuant to section 7 of that act, P.L.1985,  
42 c.222 (C.52:27D-307) pursuant to subsection b. of section 6 of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44 "Local enforcement authority" means any officer or agency of  
45 local government responsible for the implementation or  
46 enforcement of land-use and building regulations established by or  
47 pursuant to the "State Uniform Construction Code Act," P.L.1975,

1 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
2 P.L.1975, c.291 (C.40:55D-1 et seq.).

3 "Low income" means a gross annual household income equal to  
4 50% or less of the median gross annual household income for  
5 households of the same size within the relevant housing region.

6 "Moderate income" means a gross annual household income  
7 equal to not more than 80%, but more than 50% of the median gross  
8 annual household income for households of the same size within the  
9 relevant housing region.

10 "Program" means the Affordable Home Ownership Opportunities  
11 Program created by this act.

12 "Qualified nonprofit organization" means any corporation or  
13 association of persons organized under Title 15A of the New Jersey  
14 Statutes, having for its principal purpose, or as a purpose ancillary  
15 to its principal purpose, the improvement of realistic opportunities  
16 for low income and moderate income housing, as defined pursuant  
17 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
18 being within the description of section 501(c)(3) of the United  
19 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
20 determined by the agency to be a bona fide organization not under  
21 the effective control of any for-profit organization or governmental  
22 entity, and appearing capable, by virtue of past activities,  
23 qualifications of staff or board, or other features, of furthering the  
24 purposes of this act.

25 "Substantial rehabilitation" means repair, reconstruction or  
26 renovation which (1) costs in excess of 60% of the fair market value  
27 of a rehabilitated dwelling after such repair, reconstruction or  
28 renovation, or (2) renders a previously vacant and uninhabitable  
29 dwelling safe, sanitary and decent for residential purposes, or (3)  
30 converts to safe, sanitary and decent residential use a structure  
31 previously in non-residential use.

32 (cf: P.L.1995, c.343, s.3)

33

34 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
35 read as follows:

36 7. A project of new construction or substantial rehabilitation by  
37 a nonprofit organization shall be eligible for a loan under this act if  
38 (1) the homes to be constructed or substantially rehabilitated under  
39 the project are located within an identifiable neighborhood in which  
40 median family income does not exceed the current standard of  
41 "moderate income" pursuant to the contemporaneous standards **[of**  
42 **the Council on Affordable Housing]** established pursuant to the  
43 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
44 homes to be constructed or substantially rehabilitated under the  
45 project are sufficient in number and located on the same or  
46 contiguous parcels of land or within such proximity to each other as  
47 to render the cost per unit of housing practicable for acquisition by  
48 lower-income purchasers; and (3) each home constructed or

1 substantially rehabilitated within the project will conform to all  
2 requirements of the State Uniform Construction Code, except as to  
3 the waiver of any fee or other requirement pursuant to subsection b.  
4 of section 9 of this act.

5 (cf: P.L.1995, c.343, s.7)

6

7 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
8 read as follows:

9 3. As used in this act:

10 "Agency" means the New Jersey Housing and Mortgage Finance  
11 Agency.

12 "Annual income" means total income, from all sources, during  
13 the last full calendar year preceding the filing of an application for a  
14 loan pursuant to this act.

15 "Bonds" means bonds, notes or any other form of evidence of  
16 indebtedness of the agency, bearing either a fixed rate or a variable  
17 rate of interest, issued by the agency.

18 "Eligible project" means a project undertaken by a qualified  
19 housing sponsor to create housing for shared occupancy by seniors  
20 or persons with disability of low or moderate income, whether for  
21 home ownership or rental, which meets the standards of eligibility  
22 for loans under the program created by section 4 of P.L.1998, c.128  
23 (C.55:14K-75).

24 "Eligible purchaser" means a purchaser of a dwelling unit in an  
25 eligible project who fulfills the definition of a senior or person with  
26 disability pursuant to this section, is of low or moderate income and  
27 to whom a loan may be made under the program pursuant to section  
28 4 of P.L.1998, c.128 (C.55:14K-75).

29 "Fund" means the Senior and Disabled Cooperative Housing  
30 Incentive Fund established by section 6 of P.L.1998, c.128  
31 (C.55:14K-77).

32 "Housing region" means a housing region as defined in  
33 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
34 determined **【**by the Council on Affordable Housing pursuant to  
35 section 7 of P.L.1985, c.222 (C.52:27D-307)**】** pursuant to  
36 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill).

38 "Low income" means a gross annual household income equal to  
39 50% or less of the median gross annual household income for  
40 households of the same size within the relevant housing region.

41 "Moderate income" means a gross annual household income  
42 equal to not more than 80%, but more than 50% of the median gross  
43 annual household income for households of the same size within the  
44 relevant housing region.

45 "Person with disability" means any person who is 18 years of age  
46 or older and who fulfills the definition of having a "disability"  
47 pursuant to section 3 of the "Americans with Disabilities Act of  
48 1990," 42 U.S.C. s.12102).

1 "Program" means the New Jersey Senior and Disabled  
2 Cooperative Housing Finance Incentive Program created by  
3 P.L.1998, c.128 (C.55:14K-72 et seq.).

4 "Qualified housing sponsor" means any corporation or  
5 association of persons organized under the New Jersey Statutes, or  
6 any other corporation having for one of its purposes the  
7 improvement of realistic opportunities for low income and moderate  
8 income housing, as defined pursuant to the "Fair Housing Act,"  
9 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
10 virtue of past activities, qualifications of staff or board, or other  
11 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
12 72 et seq.).

13 "Retrofitting" means renovating or remodeling an existing  
14 residential or non-residential structure to allow for cooperative  
15 living.

16 "Senior" means an individual who is 55 years of age or older.

17 "Substantial rehabilitation" means repair, reconstruction or  
18 renovation which (1) costs in excess of 60% of the fair market value  
19 of a rehabilitated dwelling after such repair, reconstruction or  
20 renovation, or (2) renders a previously vacant and uninhabitable  
21 dwelling safe, sanitary and decent for residential purposes or (3)  
22 converts to safe, sanitary and decent residential use a structure  
23 previously in non-residential use.

24 (cf: P.L.1998, c.128, s.3)

25

26 36. (New section) a. (1) Notwithstanding the provisions of the  
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
28 seq.) to the contrary, the Commissioner of Community Affairs  
29 shall, in consultation with the Administrative Director of the Courts  
30 and the Executive Director of the New Jersey Housing and  
31 Mortgage Finance Agency, adopt, immediately upon filing with the  
32 Office of Administrative Law, no later than nine months after the  
33 effective date of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill), such transitional rules and regulations as  
35 necessary for the implementation of P.L. , c. (C. ) (pending  
36 before the Legislature as this bill), including for the identification  
37 of any vestigial duties of the Council on Affordable Housing and  
38 for the transfer of those duties within the Department of Community  
39 Affairs to the extent that those duties are not otherwise assumed,  
40 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
41 this bill), by municipalities or the Affordable Housing Dispute  
42 Resolution Program.

43 (2) The department, in consultation with the agency, shall  
44 thereafter amend, adopt, or readopt the regulations in accordance  
45 with the requirements of the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.).

47 b. The Executive Director of the New Jersey Housing and  
48 Mortgage Finance Agency shall adopt, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 2 seq.), no later than nine months after the effective date of P.L. , c.  
 3 (C. ) (pending before the Legislature as this bill), rules and  
 4 regulations to update the Uniform Housing Affordability Controls  
 5 as required pursuant to the "Fair Housing Act," P.L.1985, c.222  
 6 (C.52:27D-301 et al.). As part of updating the Uniform Housing  
 7 Affordability Controls, the agency shall set rules establishing that,  
 8 for the purpose of low- and moderate-income rental units, a 40-year  
 9 minimum deed restriction shall be required. For the purpose of for-  
 10 sale units, a 20-year minimum deed restriction shall be required.

11

12 37. The following sections are repealed:

13 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
 14 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
 15 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
 16 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
 17 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
 18 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
 19 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
 20 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
 21 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
 22 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
 23 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
 24 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
 25 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
 26 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
 27 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
 28 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
 29 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
 30 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
 31 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
 32 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
 33 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
 34 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
 35 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

36

37 38. a. There is appropriated to the Affordable Housing Dispute  
 38 Resolution Program, established pursuant to subsection a. of section  
 39 5 of P.L. , c. (C. ) (pending before the Legislature as this  
 40 bill), from the General Fund \$12,000,000 for the purposes of  
 41 carrying out its responsibilities for the fourth round of affordable  
 42 housing obligations, as established pursuant to section 5 of  
 43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44 b. There is appropriated to the Department of Community  
 45 Affairs, from the General Fund, \$4,000,000 for the purposes of  
 46 carrying out responsibilities allocated to it pursuant to P.L. , c.  
 47 (C. ) (pending before the Legislature as this bill).

1       39. This act shall take effect immediately, and shall apply to  
2 each new round of affordable housing obligations that begins  
3 following enactment.

4

5

6

STATEMENT

7

8       This bill would abolish the Council on Affordable Housing  
9 (COAH), initially established by the "Fair Housing Act," and would  
10 establish a process to enable a municipality to determine its own  
11 present and prospective fair share affordable housing obligation  
12 based on the formulas established in the bill, as calculated the  
13 Department of Community Affairs (DCA). In advance of the  
14 fourth, 10-year round of affordable housing obligations, beginning  
15 on July 1, 2025, the bill requires DCA to complete these  
16 calculations, and provide for their publication, on or before August  
17 1, 2024.

18       The bill permits a municipality to diverge from DCA's  
19 calculations in determining its obligation as long as it adheres to the  
20 methodology established by the bill. In advance of the fourth  
21 round, the bill requires a municipality to adopt its obligation by  
22 binding resolution, on or before January 31, 2025, in order to be  
23 assured of protection from a builder's remedy lawsuit, as defined in  
24 the bill, through which a municipality may otherwise be compelled  
25 to permit development, when the fourth round begins. If the  
26 municipality meets this deadline, then the municipality's  
27 determination of its obligation would be established by default,  
28 beginning on March 1, 2025, as the municipality's obligation for  
29 the fourth round. However, if a challenge is filed with the  
30 "Affordable Housing Dispute Resolution Program" ("program"),  
31 established in the bill, on or before February 28, 2025, the program  
32 would be required to facilitate a resolution of the dispute prior to  
33 April 1, 2025.

34       The bill requires a municipality to establish a "housing element"  
35 to encompass its obligation, and a fair share plan to meet its  
36 obligation, in advance of the fourth round, and propose necessary  
37 changes to associated ordinances, on or before June 30, 2025, in  
38 order to be assured of protection from a builder's remedy lawsuit.

39       A municipality would be required to submit its adopted fair share  
40 plan and housing element to the program. The bill permits an  
41 interested party to initiate a challenge to a municipal fair share plan  
42 and housing element, if submitted through the program on or before  
43 August 31, 2025. The program would facilitate communication  
44 over the challenge, and provide the municipality until December 31,  
45 2025 to commit to revising its fair share plan and housing element  
46 in response to the challenge, or provide an explanation as to why it  
47 will not make all or the requested changes, or both. The bill  
48 requires municipalities to adopt associated changes to municipal

1 ordinances on or before March 15, 2026. If a municipality fails to  
2 meet these deadlines, then the immunity of the municipality from  
3 builder's remedy litigation would end unless the program  
4 determines that the municipality's immunity shall be extended. If a  
5 municipality fails to adhere to any of these deadlines due to  
6 circumstances beyond the municipality's control, the bill directs the  
7 program to permit a grace period for the municipality to come into  
8 compliance with the timeline, the length of which, and effect of  
9 which on later deadlines, would be determined on a case-by-case  
10 basis.

11 After providing immunity, the bill also authorizes the program to  
12 subsequently terminate immunity under certain circumstances if it  
13 becomes apparent that the municipality is not determined to come  
14 into constitutional compliance. The municipality would still be  
15 permitted to seek immunity from a builder's remedy by initiating an  
16 action in Superior Court. A court would not grant a builder's  
17 remedy to a plaintiff in exclusionary zoning litigation during certain  
18 timeframes. The deadlines for subsequent 10-year rounds of  
19 affordable housing obligations would conform to the dates  
20 established in the bill for the fourth round.

21 In any challenge to a municipality's determination of its  
22 affordable housing obligation, or to its fair share plan and housing  
23 element, the bill requires the program to apply an objective  
24 assessment standard to determine whether or not the municipality's  
25 obligation determination, or its fair share plan and housing element,  
26 fails to comply with the requirements of the bill. Further, the  
27 challenger would be required to provide the basis for its challenge  
28 based on applicable law, and the program would have the power to  
29 dismiss challenges that do not provide such a basis.

30 All parties would be required to bear their own fees and costs for  
31 proceedings within the program. A determination by the program  
32 as to municipal obligations or compliance certification would be  
33 considered a final decision, subject to appellate review.

34 The Chief Justice of the Supreme Court would appoint an odd  
35 number of at least three and no more than seven members to serve  
36 as program leaders for the program established by the bill,  
37 consisting of retired and on recall judges, or other qualified experts.  
38 The members and employees of the program would be considered  
39 State officers and employees for the purposes of the "New Jersey  
40 Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.).  
41 The Administrative Director of the Courts would also establish  
42 procedures for the purpose of efficiently resolving circumstances in  
43 which the program is unable to address a dispute over compliance  
44 certification within the time limitations established in the bill. As a  
45 part of these procedures, in order to facilitate an appropriate level of  
46 localized control of affordable housing decisions, for each vicinage,  
47 the bill directs the Chief Justice of the Supreme Court to designate a  
48 Superior Court judge who sits within the vicinage, or a retired judge



1 who, during his or her tenure as a judge, served within the vicinage,  
2 to serve as county level housing judge to resolve disputes over the  
3 compliance, of fair share plans and housing elements of  
4 municipalities within their county, with the "Fair Housing Act,"  
5 when those disputes are not be resolved within the deadlines  
6 established in the bill. The Administrative Director of the Courts  
7 would adopt and apply a Code of Ethics for the program and county  
8 level housing judges modeled on the Code of Judicial Conduct of  
9 the American Bar Association, adopted by the State Supreme Court,  
10 and may establish additional more restrictive ethical standards in  
11 order to meet the specific needs of the program and of county level  
12 housing judges.

13 Each municipality's determination of its fair share obligation  
14 would be made through the guidance of preliminary calculations  
15 made by DCA. No later than August 1 of the year prior to the year  
16 when a new round of housing obligations begins, the bill requires  
17 DCA to calculate regional need and municipal present and  
18 prospective obligations in accordance with formulas established in  
19 the bill. DCA's calculations would be made publicly available, and  
20 provided to each municipality for use in determining their present  
21 and prospective obligations.

22 Municipal fair share obligations would be determined by  
23 applying the methods provided in the bill, along with the methods  
24 used by the Superior Court for the third round, to the extent that  
25 applicable methodologies are not explicitly articulated in the bill.  
26 Municipal present need obligations would be determined by  
27 estimating the existing deficient housing currently occupied by low-  
28 and moderate- income households within the municipality.

29 Regional prospective need would next be determined, upon  
30 which to base the municipal obligation, by estimating the regional  
31 growth of low- and moderate-income households during the  
32 housing round at issue. The bill would simplify the regional need  
33 estimation from the processes used in previous rounds in order to  
34 ease the administrative burden that has been associated with this  
35 process. First, projected household change for a 10-year round in a  
36 region would be estimated by establishing the household change  
37 experienced in the region between the most recent federal decennial  
38 census, the second-most recent federal decennial census. Although  
39 this relies on historical data, recent household change in a region is  
40 relevant to estimating future household change and associated  
41 housing need. This household change would be divided by 2.5 to  
42 estimate the number of low- and moderate-income homes needed to  
43 address population change in the region, thereby determining the  
44 regional prospective need for the 10-year round. If household  
45 change is zero or negative, the number of low- and moderate-  
46 income homes needed to address low- and moderate-income  
47 household change in the region and the regional prospective would  
48 be zero.

1 After determining regional prospective need, each municipality's  
2 fair share prospective obligation of that regional prospective need  
3 would be determined. To do this, DCA would first determine  
4 whether a municipality is a qualified urban aid municipality, and if  
5 so, the municipality would not have a prospective need obligation.

6 If the municipality is not a qualified urban aid municipality,  
7 three factors necessary for the prospective fair share determination  
8 would be calculated. First, the equalized nonresidential valuation  
9 factor, representing the municipality's share of the regional change  
10 in the value of nonresidential property, would be calculated. In  
11 prior rounds, this calculation, concerning nonresidential  
12 (commercial and industrial) property values, has been adopted as a  
13 representation of a municipality's employment potential. Data  
14 available from the Division of Local Government Services in DCA  
15 would be used for this calculation. Next, an income capacity factor  
16 would be determined, using a formula comparable to one used in  
17 prior rounds to estimate the municipality's ability to absorb low-  
18 and moderate-income households. The municipality's land capacity  
19 factor would then be determined, representing the municipality's  
20 relative share of developable and redevelopable land, available to  
21 accommodate development, using data made available by the  
22 Department of Environmental Protection or the Division of  
23 Taxation in the Department of Treasury. The average of these three  
24 factors would be determined and multiplied by the regional  
25 prospective need to determine the municipality's gross prospective  
26 need.

27 Finally, the bill would require, where appropriate, adjustments  
28 for secondary sources of housing supply and demand by first  
29 calculating demolitions of low- and moderate-income housing, and  
30 housing creation through residential conversions. To do this, a  
31 municipality's share of conversions would be subtracted from the  
32 sum of each municipality's allocated share of gross prospective  
33 need and demolitions of low- and moderate-income housing. After  
34 applying these secondary sources, as appropriate, the municipality's  
35 prospective fair share obligation for the 10-year round would be  
36 established.

37 A municipality would be permitted to make adjustments for a  
38 lack of available land resources as part of the determination of a  
39 municipality's fair share of affordable housing when, for example  
40 certain municipal lands are devoted for conservation purposes.  
41 However, the bill would require a municipality that receives such a  
42 vacant land adjustment to its fair share obligation to identify parcels  
43 for redevelopment to address at least 25 percent of the prospective  
44 need obligation that has been adjusted, and adopt zoning that allows  
45 for the adjusted obligation, or demonstrate why this is not possible.

46 A municipality would ultimately be permitted to reduce its  
47 prospective need if necessary to prevent establishing a prospective  
48 need obligation that exceeds 1,000 units in total or 20 percent of the

1 estimated occupied housing stock at the beginning of the 10-year  
2 round, whichever limitation results in a lower number.

3 The bill requires that a municipality is required to satisfy a  
4 minimum of 50 percent of the actual affordable housing units,  
5 exclusive of any bonus credits, created to address its prospective  
6 need affordable housing obligation through the creation of housing  
7 available to families with children. The bill amends existing  
8 statutory language to ensure that affordable housing is constructed  
9 that is accessible to persons with disabilities.

10 The bill permits a municipality to be credited for as much as 10  
11 percent of its affordable housing obligation through transitional  
12 housing, and defines "transitional housing" as temporary housing,  
13 including but not limited to, single room occupancy housing or  
14 shared living and supportive living arrangements, that provides  
15 access to on-site or off-site supportive services for very low-income  
16 households who have recently been homeless or lack stable  
17 housing.

18 The bill would establish limitations on the use of municipal  
19 affordable housing trust fund moneys for administrative costs,  
20 attorney fees, court costs to obtain immunity from a builder's  
21 remedy, to contest the municipality's fair share obligation, or use of  
22 the trust fund moneys while a municipality does not have immunity  
23 from builder's remedy litigation. The bill would authorize a  
24 municipality to expend a portion of its affordable housing trust fund  
25 on actions and efforts reasonably related to or necessary for certain  
26 processes of the program, as provided in the bill. The bill would  
27 require each municipality authorized to retain and expend non-  
28 residential development fees to periodically provide DCA with an  
29 accounting of all such fees that have been collected and expended.

30 The bill would prohibit a municipality from receiving bonus  
31 credit for any particular type of low- or moderate-income housing,  
32 unless authority to obtain bonus credit is expressly provided by the  
33 "Fair Housing Act," as amended and supplemented by the bill. The  
34 bill expressly prohibits a municipality from receiving more than one  
35 type of bonus credit for any unit, or from satisfying more than 25  
36 percent of its prospective need obligation through the use of bonus  
37 credits. The bill expressly authorizes bonus credits in the amounts  
38 provided in the bill for: (1) housing for individuals with special  
39 needs or permanent supportive housing; (2) ownership units created  
40 in partnership sponsorship with a non-profit housing developer; (3)  
41 housing located in a Garden State Growth Zone or certain transit-  
42 oriented locations; (4) certain age-restricted housing units; (5)  
43 family housing with at least three bedrooms above the minimum  
44 number required by the bedroom distribution in a given  
45 development; (6) housing constructed on certain land previously  
46 used for retail, office, or commercial space; (7) certain existing  
47 rental housing for which affordability controls are extended through  
48 municipal contributions; (8) certain 100 percent affordable

1 developments built through municipal contributions of land or  
2 funding; and (9) certain housing for very low-income households.  
3 The bill also clarifies that all parties would be entitled to rely upon  
4 regulations on municipal credits, adjustments, and compliance  
5 mechanisms previously adopted by COAH unless those regulations  
6 are contradicted by statute, including but not limited to this bill, or  
7 binding court decisions.

8 The bill would require DCA to maintain certain affordable  
9 housing-related information on its website, including: (1) the start  
10 and expiration dates of deed restrictions; (2) residential and non-  
11 residential development fees collected and expended, including  
12 purposes and amounts of such expenditures; and (3) the current  
13 balance in the municipality's affordable housing trust funds. The  
14 bill would also direct municipalities to provide the information to  
15 DCA necessary to comply with this requirement.

16 The bill would amend various parts of the statutory law to  
17 remove references to COAH, and to transfer rulemaking authority,  
18 to the extent necessary, from COAH to DCA and the New Jersey  
19 Housing and Mortgage Finance Agency (HMFA). The bill directs  
20 HMFA to update the Uniform Housing Affordability Controls  
21 within nine months following the effective date of the bill. With  
22 certain exceptions, for the purpose of affordable rental units, a 40-  
23 year minimum deed restriction would be required, and in the case of  
24 for-sale units, a 20-year minimum deed restriction would be  
25 required.

26 The bill would appropriate \$12 million to the program, and \$4  
27 million to DCA, from the General Fund, for the purposes of  
28 carrying out their respective responsibilities for the fourth round of  
29 affordable housing obligations.

30 The bill would take effect immediately, and would apply to each  
31 new round of affordable housing obligations beginning after  
32 enactment of the bill.