

[First Reprint]

ASSEMBLY, No. 3337

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Senator BRIAN P. STACK

District 33 (Hudson)

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Assemblyman Stanley

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on February 8, 2024, with amendments.

(Sponsorship Updated As Of: 3/18/2024)

1 **AN ACT** authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

11 20. There is established in the Department of Community Affairs
12 a separate trust fund, to be used for the exclusive purposes as provided
13 in this section, and which shall be known as the "New Jersey
14 Affordable Housing Trust Fund." The fund shall be a non-lapsing,
15 revolving trust fund, and all monies deposited or received for purposes
16 of the fund shall be accounted for separately, by source and amount,
17 and remain in the fund until appropriated for such purposes. The fund
18 shall be the repository of all State funds appropriated for affordable
19 housing purposes, including, but not limited to, the proceeds from the
20 receipts of the additional fee collected pursuant to paragraph (2) of
21 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from
22 available receipts of the Statewide non-residential development fees
23 collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4),
24 monies lapsing or reverting from municipal development trust funds,
25 or other monies as may be dedicated, earmarked, or appropriated by
26 the Legislature for the purposes of the fund. All references in any law,
27 order, rule, regulation, contract, loan, document, or otherwise, to the
28 "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean
29 the "New Jersey Affordable Housing Trust Fund." The department
30 shall be permitted to utilize annually up to 7.5 percent of the monies
31 available in the fund for the payment of any necessary administrative
32 costs related to the administration of the "Fair Housing Act," P.L.1985,
33 c.222 (C.52:27D-301 et al.), or any costs related to administration of
34 P.L.2008, c.46 (C.52:27D-329.1 et al.).

35 a. Except as permitted pursuant to subsection g. of this section,
36 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
37 commissioner shall award grants or loans from this fund for housing
38 projects and programs in municipalities whose housing elements have
39 received substantive certification from the council, in municipalities
40 receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.),
41 in municipalities subject to a builder's remedy as defined in section 28
42 of P.L.1985, c.222 (C.52:27D-328), or in receiving municipalities in
43 cases where the council has approved a regional contribution
44 agreement and a project plan developed by the receiving municipality.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted February 8, 2024.

1 Of those monies deposited into the "New Jersey Affordable
2 Housing Trust Fund" that are derived from municipal development fee
3 trust funds, or from available collections of Statewide non-residential
4 development fees, a priority for funding shall be established for
5 projects in municipalities that have petitioned the council for
6 substantive certification.

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

10 b. (1) The commissioner shall establish rules and regulations
11 governing the qualifications of applicants, the application procedures,
12 and the criteria for awarding grants and loans and the standards for
13 establishing the amount, terms, and conditions of each grant or loan.

14 (2) The governing body of a municipality in which a housing
15 project or program is located, and which is awarded a grant or loan
16 from the fund for a housing project or program, may provide, by
17 ordinance ¹[or resolution as appropriate]¹, that the units of affordable
18 housing being developed ¹or preserved¹ pursuant to a housing project
19 or program being funded, in whole or in part, through the "New Jersey
20 Affordable Housing Trust Fund" shall be exempt from real property
21 taxation if the housing sponsor enters into an agreement with the
22 municipality for payments to the municipality in lieu of taxes for
23 municipal services. Any such agreement may require the housing
24 sponsor to pay to the municipality an amount up to 20 percent of the
25 annual gross revenue from each housing project situated on such real
26 property for each year of operation of the agreement following the
27 substantial completion of the housing project. ¹Any such agreement
28 shall require the housing sponsor to pay the municipality an amount
29 not less than the greater of four percent of the annual gross revenue or
30 the amount of the taxes attributable to the land value component of the
31 property comprising the project site for the year preceding the
32 recording of the mortgage, if applicable. In the case of a property
33 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
34 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
35 shall be required to pay to the municipality shall be four percent of the
36 annual gross revenue.¹ For the purpose of this subsection, "annual
37 gross revenue" means the total annual gross rental or carrying charge
38 and other income of a housing sponsor from a housing project. If an
39 agreement is entered into from the date of recording the mortgage on
40 the housing project to the date of substantial completion of the housing
41 project, the annual amount payable to the municipality as taxes or as
42 payments in lieu of taxes in respect of the project site shall not be in
43 excess of the amount of taxes on the project site for the year preceding
44 the recording of the mortgage. ¹[An agreement between a housing
45 sponsor and a municipality entered into pursuant to this subsection
46 shall be submitted to the commissioner for review in order to avoid
47 duplicating, overlapping or inconsistent regulations or provisions.]

1 Within 30 calendar days following: the effective date of an ordinance
2 adopted by a municipal governing body approving a tax exemption
3 under this subsection; or the execution of a financial agreement
4 between a housing sponsor and a municipality entered into pursuant to
5 this subsection, whichever is later, the municipal clerk shall
6 electronically transmit a certified copy of the ordinance and the
7 agreement to the Director of the Division of Local Government
8 Services in such a manner as may be specified by the director.¹ An
9 exemption from taxation provided pursuant to this subsection shall not
10 extend beyond the date on which an eligible loan made for the project
11 is paid in full.

12 (3) Notwithstanding the provisions of any law or regulation ¹**[in]**
13 to¹ the contrary, the governing body of a municipality may agree to
14 continue a tax exemption for a State, federally, or municipally
15 subsidized housing project beyond the date on which an eligible loan
16 made for the project is fully paid, or beyond the date upon which a tax
17 exemption expires, ¹**[if]** for any period¹ the project remains subject to
18 affordability controls pursuant to:

19 (a) project-based federal rental assistance, authorized pursuant to
20 section 8 of the United States Housing Act of 1937 (42 U.S.C.
21 s.1437f), or other federal or State project-based assistance;

22 (b) the Uniform Housing Affordability Controls promulgated by
23 the New Jersey Housing and Mortgage Finance Agency; or

24 (c) the rent and income limits established by the federal Low
25 Income Housing Tax Credit program pursuant to section 42 of the
26 Internal Revenue Code (26 U.S.C. s.42).

27 c. For any period which the council may approve, the
28 commissioner may assist affordable housing programs which are not
29 located in municipalities whose housing elements have been granted
30 substantive certification or which are not in furtherance of a regional
31 contribution agreement; provided that the affordable housing program
32 will meet all or part of a municipal low and moderate income housing
33 obligation.

34 d. Amounts deposited in the "New Jersey Affordable Housing
35 Trust Fund" shall be targeted to regions based on the region's
36 percentage of the State's low and moderate income housing need as
37 determined by the council. Amounts in the fund shall be applied for
38 the following purposes in designated neighborhoods:

39 (1) Rehabilitation of substandard housing units occupied or to be
40 occupied by low and moderate income households;

41 (2) Creation of accessory apartments to be occupied by low and
42 moderate income households;

43 (3) Conversion of non-residential space to residential purposes;
44 provided a substantial percentage of the resulting housing units are to
45 be occupied by low and moderate income households;

46 (4) Acquisition of real property, demolition and removal of
47 buildings, or construction of new housing that will be occupied by low
48 and moderate income households, or any combination thereof;

1 (5) Grants of assistance to eligible municipalities for costs of
2 necessary studies, surveys, plans, and permits; engineering,
3 architectural, and other technical services; costs of land acquisition and
4 any buildings thereon; and costs of site preparation, demolition, and
5 infrastructure development for projects undertaken pursuant to an
6 approved regional contribution agreement;

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

15 (7) Other housing programs for low and moderate income housing,
16 including, without limitation, (a) infrastructure projects directly
17 facilitating the construction of low and moderate income housing not
18 to exceed a reasonable percentage of the construction costs of the low
19 and moderate income housing to be provided and (b) alteration of
20 dwelling units occupied or to be occupied by households of low or
21 moderate income and the common areas of the premises in which they
22 are located in order to make them accessible to persons with
23 disabilities.

24 e. Any grant or loan agreement entered into pursuant to this
25 section shall incorporate contractual guarantees and procedures by
26 which the division will ensure that any unit of housing provided for
27 low and moderate income households shall continue to be occupied by
28 low and moderate income households for at least 20 years following
29 the award of the loan or grant, except that the division may approve a
30 guarantee for a period of less than 20 years where necessary to ensure
31 project feasibility.

32 f. Notwithstanding the provisions of any other law, rule, or
33 regulation to the contrary, in making grants or loans under this section,
34 the department shall not require that tenants be certified as low or
35 moderate income or that contractual guarantees or deed restrictions be
36 in place to ensure continued low and moderate income occupancy as a
37 condition of providing housing assistance from any program
38 administered by the department, when that assistance is provided for a
39 project of moderate rehabilitation if the project: (1) contains 30 or
40 fewer rental units; and (2) is located in a census tract in which the
41 median household income is 60 percent or less of the median income
42 for the housing region in which the census tract is located, as
43 determined for a three person household by the council in accordance
44 with the latest federal decennial census. A list of eligible census tracts
45 shall be maintained by the department and shall be adjusted upon
46 publication of median income figures by census tract after each federal
47 decennial census.

1 g. In addition to other grants or loans awarded pursuant to this
2 section, and without regard to any limitations on such grants or loans
3 for any other purposes herein imposed, the commissioner shall
4 annually allocate such amounts as may be necessary in the
5 commissioner's discretion, and in accordance with section 3 of
6 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
7 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
8 287.1 et al.). Such rental assistance grants shall be deemed necessary
9 and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in
10 order to meet the housing needs of certain low income households who
11 may not be eligible to occupy other housing produced pursuant to
12 P.L.1985, c.222 (C.52:27D-301 et al.).

13 h. The department and the State Treasurer shall submit the "New
14 Jersey Affordable Housing Trust Fund" for an audit annually by the
15 State Auditor or State Comptroller, at the discretion of the Treasurer.
16 In addition, the department shall prepare an annual report for each
17 fiscal year, and submit it by November 30th of each year to the
18 Governor and the Legislature, and the Joint Committee on Housing
19 Affordability, or its successor, and post the information to its web site,
20 of all activity of the fund, including details of the grants and loans by
21 number of units, number and income ranges of recipients of grants or
22 loans, location of the housing renovated or constructed using monies
23 from the fund, the number of units upon which affordability controls
24 were placed, and the length of those controls. The report also shall
25 include details pertaining to those monies allocated from the fund for
26 use by the State rental assistance program pursuant to section 3 of
27 P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

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

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

34

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

37 8. a. (1) The council may authorize a municipality that has
38 petitioned for substantive certification, or that has been so authorized
39 by a court of competent jurisdiction, and which has adopted a
40 municipal development fee ordinance to impose and collect
41 development fees from developers of residential property, in
42 accordance with rules promulgated by the council. Each amount
43 collected shall be deposited and shall be accounted for separately, by
44 payer and date of deposit.

45 (2) A municipality may not spend or commit to spend any
46 affordable housing development fees, including Statewide non-
47 residential fees collected and deposited into the municipal affordable
48 housing trust fund, without first obtaining the council's approval of the

1 expenditure. The council shall promulgate regulations regarding the
2 establishment, administration and enforcement of the expenditure of
3 affordable housing development fees by municipalities. The council
4 shall have exclusive jurisdiction regarding the enforcement of these
5 regulations, provided that any municipality which is not in compliance
6 with the regulations adopted by the council may be subject to
7 forfeiture of any or all funds remaining within its municipal trust fund.
8 Any funds so forfeited shall be deposited into the "New Jersey
9 Affordable Housing Trust Fund" established pursuant to section 20 of
10 P.L.1985, c.222 (C.52:27D-320).

11 (3) The governing body of a municipality which is spending or
12 committing to spend affordable housing development fees may
13 provide, by ordinance ¹["or resolution as appropriate"]¹, that the units
14 of affordable housing being developed ¹or preserved¹ pursuant to a
15 housing project or program being funded, in whole or in part, through
16 affordable housing development fees shall be exempt from real
17 property taxation if the housing sponsor enters into an agreement with
18 the municipality for payments to the municipality in lieu of taxes for
19 municipal services. Any such agreement may require the housing
20 sponsor to pay to the municipality an amount up to 20 percent of the
21 annual gross revenue from each housing project situated on such real
22 property for each year of operation of the agreement following the
23 substantial completion of the housing project. ¹Any such agreement
24 shall require the housing sponsor to pay the municipality an amount
25 not less than the greater of four percent of the annual gross revenue or
26 the amount of the taxes attributable to the land value component of the
27 property comprising the project site for the year preceding the
28 recording of the mortgage, if applicable. In the case of a property
29 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
30 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
31 shall be required to pay to the municipality shall be four percent of the
32 annual gross revenue.¹ For the purpose of this subsection, "annual
33 gross revenue" means the total annual gross rental or carrying charge
34 and other income of a housing sponsor from a housing project. If an
35 agreement is entered into from the date of recording the mortgage on
36 the housing project to the date of substantial completion of the housing
37 project, the annual amount payable to the municipality as taxes or as
38 payments in lieu of taxes in respect of the project site shall not be in
39 excess of the amount of taxes on the project site for the year preceding
40 the recording of the mortgage. ¹["An agreement between a housing
41 sponsor and a municipality entered into pursuant to this subsection
42 shall be submitted to the commissioner for review in order to avoid
43 duplicating, overlapping or inconsistent regulations or provisions.]
44 Within 30 calendar days following: the effective date of an ordinance
45 adopted by a municipal governing body approving a tax exemption
46 under this subsection; or the execution of a financial agreement
47 between a housing sponsor and a municipality entered into pursuant to

1 this subsection, whichever is later, the municipal clerk shall
2 electronically transmit a certified copy of the ordinance and the
3 agreement to the Director of the Division of Local Government
4 Services in such a manner as may be specified by the director.¹ An
5 exemption from taxation provided in accordance with this subsection
6 shall not extend beyond the date on which an eligible loan made for
7 the project is paid in full.

8 (4) Notwithstanding the provisions of any law or regulation ¹[in]
9 to¹ the contrary, the governing body of a municipality may agree to
10 continue ¹or grant¹ a ¹new¹ tax exemption for a State, federally, or
11 municipally subsidized housing project beyond the date on which an
12 eligible loan made for the project is fully paid, or beyond the date upon
13 which a tax exemption expires. ¹[if] for any period¹ the project
14 remains subject to affordability controls pursuant to:

15 (a) project-based federal rental assistance, authorized pursuant to
16 section 8 of the United States Housing Act of 1937 (42 U.S.C.
17 s.1437f), or other federal or State project-based assistance;

18 (b) the Uniform Housing Affordability Controls promulgated by
19 the New Jersey Housing and Mortgage Finance Agency; or

20 (c) the rent and income limits established by the federal Low
21 Income Housing Tax Credit program pursuant to section 42 of the
22 Internal Revenue Code (26 U.S.C. s.42).

23 b. A municipality shall deposit all fees collected, whether or not
24 such collections were derived from fees imposed upon non-residential
25 or residential construction into a trust fund dedicated to those purposes
26 as required under this section, and such additional purposes as may be
27 approved by the council.

28 c. (1) A municipality may only spend development fees for an
29 activity approved by the council to address the municipal fair share
30 obligation.

31 (2) Municipal development trust funds shall not be expended to
32 reimburse municipalities for activities which occurred prior to the
33 authorization of a municipality to collect development fees.

34 (3) A municipality shall set aside a portion of its development fee
35 trust fund for the purpose of providing affordability assistance to low
36 and moderate income households in affordable units included in a
37 municipal fair share plan, in accordance with rules of the council.

38 (a) Affordability assistance programs may include down payment
39 assistance, security deposit assistance, low interest loans, common
40 maintenance expenses for units located in condominiums, rental
41 assistance, and any other program authorized by the council.

42 (b) Affordability assistance to households earning 30 percent or
43 less of median income may include buying down the cost of low
44 income units in a municipal fair share plan to make them affordable to
45 households earning 30 percent or less of median income. The use of
46 development fees in this manner shall not entitle a municipality to
47 bonus credits except as may be provided by the rules of the council.

1 (4) A municipality may contract with a private or public entity to
2 administer any part of its housing element and fair share plan,
3 including the requirement for affordability assistance, or any program
4 or activity for which the municipality expends development fee
5 proceeds, in accordance with rules of the council.

6 (5) Not more than 20 percent of the revenues collected from
7 development fees shall be expended on administration, in accordance
8 with rules of the council.

9 d. The council shall establish a time by which all development
10 fees collected within a calendar year shall be expended; provided,
11 however, that all fees shall be committed for expenditure within four
12 years from the date of collection. A municipality that fails to commit
13 to expend the balance required in the development fee trust fund by the
14 time set forth in this section shall be required by the council to transfer
15 the remaining unspent balance at the end of the four-year period to the
16 "New Jersey Affordable Housing Trust Fund," established pursuant to
17 section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by
18 P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing
19 region of the transferring municipality for the authorized purposes of
20 that fund.

21 e. Notwithstanding any provision of this section, or regulations of
22 the council, a municipality shall not collect a development fee from a
23 developer whenever that developer is providing for the construction of
24 affordable units, either on-site or elsewhere within the municipality.

25 This section shall not apply to the collection of a Statewide
26 development fee imposed upon non-residential development pursuant
27 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) by
28 the State Treasurer, when such collection is not authorized to be
29 retained by a municipality.

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

31

32 3. This act shall take effect immediately.