

[Second Reprint]

**ASSEMBLY, No. 500**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED MARCH 13, 2008

**Sponsored by:**

**Assemblyman JOSEPH J. ROBERTS, JR.**

**District 5 (Camden and Gloucester)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex)**

**SYNOPSIS**

Revises laws concerning the provision of affordable housing.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on June 5, 2008,  
with amendments.



**(Sponsorship Updated As Of: 5/6/2008)**

1 AN ACT concerning affordable housing, revising and supplementing  
2 various parts of the statutory law.

3

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

6

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

9 3. As used in this act:

10 “Bonds” means any bonds, notes, interim certificates, debentures  
11 or other obligations issued by a municipality, county,  
12 redevelopment entity, or housing authority pursuant to **[this act]**  
13 P.L.1992, c.79 (C.40A:12A-1 et seq.).

14 “Comparable, affordable replacement housing” means ‘newly-  
15 constructed or substantially rehabilitated’ housing ‘to be’ offered  
16 to households being displaced as a result of a redevelopment  
17 project, that is affordable to that household based on its income  
18 under the guidelines established by the Council on Affordable  
19 Housing in the Department of Community Affairs for maximum  
20 affordable sales prices or maximum fair market rents, and that is  
21 comparable to the household’s dwelling in the redevelopment area  
22 with respect to the size and amenities of the dwelling unit, the  
23 quality of the neighborhood, and the level of public services and  
24 facilities offered by the municipality in which the redevelopment  
25 area is located.

26 “Development” means the division of a parcel of land into two or  
27 more parcels, the construction, reconstruction, conversion,  
28 structural alteration, relocation, or enlargement of any building or  
29 other structure, or of any mining, excavation or landfill, and any use  
30 or change in the use of any building or other structure, or land or  
31 extension of use of land, for which permission may be required  
32 pursuant to the “Municipal Land Use Law,” P.L.1975, c.291  
33 (C.40:55D-1 et seq.).

34 “Governing body” means the body exercising general legislative  
35 powers in a county or municipality according to the terms and  
36 procedural requirements set forth in the form of government  
37 adopted by the county or municipality.

38 “Housing authority” means a housing authority created or  
39 continued pursuant to this act.

40 “Housing project” means a project, or distinct portion of a  
41 project, which is designed and intended to provide decent, safe and  
42 sanitary dwellings, apartments or other living accommodations for  
43 persons of low and moderate income; such work or undertaking

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHO committee amendments adopted May 22, 2008.

<sup>2</sup>Assembly AAP committee amendments adopted June 5, 2008.

1 may include buildings, land, equipment, facilities and other real or  
2 personal property for necessary, convenient or desirable  
3 appurtenances, streets, sewers, water service, parks, site  
4 preparation, gardening, administrative, community, health,  
5 recreational, educational, welfare or other purposes. The term  
6 “housing project” also may be applied to the planning of the  
7 buildings and improvements, the acquisition of property, the  
8 demolition of existing structures, the construction, reconstruction,  
9 alteration and repair of the improvements and all other work in  
10 connection therewith.

11 “Persons of low and moderate income” means persons or  
12 families who are, in the case of State assisted projects or programs,  
13 so defined by the Council on Affordable Housing in the Department  
14 of Community Affairs, or in the case of federally assisted projects  
15 or programs, defined as of “low and very low income” by the  
16 United States Department of Housing and Urban Development.

17 “Public body” means the State or any county, municipality,  
18 school district, authority or other political subdivision of the State.

19 “Public housing” means any housing for persons of low and  
20 moderate income owned by a municipality, county, the State or the  
21 federal government, or any agency or instrumentality thereof.

22 “Publicly assisted housing” means privately owned housing  
23 which receives public assistance or subsidy, which may be grants or  
24 loans for construction, reconstruction, conservation, or  
25 rehabilitation of the housing, or receives operational or maintenance  
26 subsidies either directly or through rental subsidies to tenants, from  
27 a federal, State or local government agency or instrumentality.

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 seq.), repealed by this act, which has been permitted in accordance  
8 with the provisions of this act to continue to exercise its  
9 redevelopment functions and powers.

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

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

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

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

45 “Rehabilitation” means an undertaking, by means of extensive  
46 repair, reconstruction or renovation of existing structures, with or  
47 without the introduction of new construction or the enlargement of  
48 existing structures, in any area that has been determined to be in

1 need of rehabilitation or redevelopment, to eliminate substandard  
2 structural or housing conditions and arrest the deterioration of that  
3 area.

4 “Rehabilitation area” or “area in need of rehabilitation” means  
5 any area determined to be in need of rehabilitation pursuant to  
6 section 14 of P.L.1992, c.79 (C.40A:12A-14).  
7 (cf: P.L.1992, c.79, s.3)

8  
9 2. Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended to  
10 read as follows:

11 7. a. No redevelopment project shall be undertaken or carried  
12 out except in accordance with a redevelopment plan adopted by  
13 ordinance of the municipal governing body, upon its finding that the  
14 specifically delineated project area is located in an area in need of  
15 redevelopment or in an area in need of rehabilitation, or in both,  
16 according to criteria set forth in section 5 or section 14 of P.L.1992,  
17 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

18 The redevelopment plan shall include an outline for the planning,  
19 development, redevelopment, or rehabilitation of the project area  
20 sufficient to indicate:

21 (1) Its relationship to definite local objectives as to appropriate  
22 land uses, density of population, and improved traffic and public  
23 transportation, public utilities, recreational and community facilities  
24 and other public improvements.

25 (2) Proposed land uses and building requirements in the project  
26 area.

27 (3) Adequate provision for the temporary and permanent  
28 relocation, as necessary, of residents in the project area, including  
29 an estimate of the extent to which decent, safe and sanitary dwelling  
30 units affordable to displaced residents will be available to them in  
31 the existing local housing market.

32 (4) An identification of any property within the redevelopment  
33 area which is proposed to be acquired in accordance with the  
34 redevelopment plan.

35 (5) Any significant relationship of the redevelopment plan to (a)  
36 the master plans of contiguous municipalities, (b) the master plan of  
37 the county in which the municipality is located, and (c) the State  
38 Development and Redevelopment Plan adopted pursuant to the  
39 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).

40 (6) As of the date of the adoption of the resolution finding the  
41 area to be in need of redevelopment, an inventory of all housing  
42 units affordable to low and moderate income households, as defined  
43 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to  
44 be removed as a result of implementation of the redevelopment  
45 plan, whether as a result of subsidies or market conditions, listed by  
46 affordability level, number of bedrooms, and tenure.

47 (7) A plan for the provision, through new construction or  
48 substantial rehabilitation of one comparable, affordable replacement

1 housing unit for each affordable housing unit <sup>2</sup>that has been  
2 occupied at any time within the last 18 months, <sup>1</sup>that is subject to  
3 affordability controls and <sup>1</sup>that is identified as to be removed as a  
4 result of implementation of the redevelopment plan. Displaced  
5 residents of housing units provided under any State or federal  
6 housing subsidy program, or pursuant to the "Fair Housing Act,"  
7 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to  
8 be eligible, shall have first priority for those replacement units  
9 provided under the plan; provided that any such replacement unit  
10 shall not be <sup>2</sup>[counted toward the] credited against a prospective<sup>2</sup>  
11 municipal obligation under the "Fair Housing Act," P.L.1985, c.222  
12 (C.52:27D-301 et al.), if the housing unit which is removed had  
13 previously been credited toward satisfying the municipal fair share  
14 obligation. To the extent reasonably feasible, replacement housing  
15 shall be provided within or in close proximity to the redevelopment  
16 area. A municipality shall report annually to the Department of  
17 Community Affairs on its progress in implementing the plan for  
18 provision of comparable, affordable replacement housing required  
19 pursuant to this section.

20 b. A redevelopment plan may include the provision of  
21 affordable housing in accordance with the "Fair Housing Act,"  
22 P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of  
23 the municipal master plan.

24 c. The redevelopment plan shall describe its relationship to  
25 pertinent municipal development regulations as defined in the  
26 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).  
27 The redevelopment plan shall supersede applicable provisions of the  
28 development regulations of the municipality or constitute an  
29 overlay zoning district within the redevelopment area. When the  
30 redevelopment plan supersedes any provision of the development  
31 regulations, the ordinance adopting the redevelopment plan shall  
32 contain an explicit amendment to the zoning district map included  
33 in the zoning ordinance. The zoning district map as amended shall  
34 indicate the redevelopment area to which the redevelopment plan  
35 applies. Notwithstanding the provisions of the "Municipal Land  
36 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no  
37 notice beyond that required for adoption of ordinances by the  
38 municipality shall be required for the hearing on or adoption of the  
39 redevelopment plan or subsequent amendments thereof.

40 d. All provisions of the redevelopment plan shall be either  
41 substantially consistent with the municipal master plan or designed  
42 to effectuate the master plan; but the municipal governing body may  
43 adopt a redevelopment plan which is inconsistent with or not  
44 designed to effectuate the master plan by affirmative vote of a  
45 majority of its full authorized membership with the reasons for so  
46 acting set forth in the redevelopment plan.

47 e. Prior to the adoption of a redevelopment plan, or revision or  
48 amendment thereto, the planning board shall transmit to the

1 governing body, within 45 days after referral, a report containing its  
2 recommendation concerning the redevelopment plan. This report  
3 shall include an identification of any provisions in the proposed  
4 redevelopment plan which are inconsistent with the master plan and  
5 recommendations concerning these inconsistencies and any other  
6 matters as the board deems appropriate. The governing body, when  
7 considering the adoption of a redevelopment plan or revision or  
8 amendment thereof, shall review the report of the planning board  
9 and may approve or disapprove or change any recommendation by a  
10 vote of a majority of its full authorized membership and shall  
11 record in its minutes the reasons for not following the  
12 recommendations. Failure of the planning board to transmit its  
13 report within the required 45 days shall relieve the governing body  
14 from the requirements of this subsection with regard to the pertinent  
15 proposed redevelopment plan or revision or amendment thereof.  
16 Nothing in this subsection shall diminish the applicability of the  
17 provisions of subsection d. of this section with respect to any  
18 redevelopment plan or revision or amendment thereof.

19 f. The governing body of a municipality may direct the  
20 planning board to prepare a redevelopment plan or an amendment  
21 or revision to a redevelopment plan for a designated redevelopment  
22 area. After completing the redevelopment plan, the planning board  
23 shall transmit the proposed plan to the governing body for its  
24 adoption. The governing body, when considering the proposed  
25 plan, may amend or revise any portion of the proposed  
26 redevelopment plan by an affirmative vote of the majority of its full  
27 authorized membership and shall record in its minutes the reasons  
28 for each amendment or revision. When a redevelopment plan or  
29 amendment to a redevelopment plan is referred to the governing  
30 body by the planning board under this subsection, the governing  
31 body shall be relieved of the referral requirements of subsection e.  
32 of this section.

33 (cf: P.L.1992, c.79, s.7)

34

35 3. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to  
36 read as follows:

37 4. (a) Prior to the adoption, amendment, or repeal of any rule,  
38 except as may be otherwise provided, the agency shall:

39 (1) Give at least 30 days' notice of its intended action. The  
40 notice shall include a statement of either the terms or substance of  
41 the intended action or a description of the subjects and issues  
42 involved, and the time when, the place where, and the manner in  
43 which interested persons may present their views thereon. The  
44 notice shall be mailed to all persons who have made timely requests  
45 of the agency for advance notice of its rule-making proceedings and  
46 in addition to other public notice required by law shall be published  
47 in the New Jersey Register. Notice shall also be distributed to the  
48 news media maintaining a press office to cover the State House

1 Complex, and made available electronically through the largest  
2 nonproprietary cooperative public computer network. Each agency  
3 shall additionally publicize the intended action and shall adopt rules  
4 to prescribe the manner in which it will do so, and inform those  
5 persons most likely to be affected by or interested in the intended  
6 action. Methods that may be employed include publication of the  
7 notice in newspapers of general circulation or in trade, industry,  
8 governmental or professional publications, distribution of press  
9 releases to the news media and posting of notices in appropriate  
10 locations. The rules shall prescribe the circumstances under which  
11 each additional method shall be employed;

12 (2) Prepare for public distribution at the time the notice appears  
13 in the Register a statement setting forth a summary of the proposed  
14 rule, a clear and concise explanation of the purpose and effect of the  
15 rule, the specific legal authority under which its adoption is  
16 authorized, a description of the expected socio-economic impact of  
17 the rule, a regulatory flexibility analysis, or the statement of finding  
18 that a regulatory flexibility analysis is not required, as provided in  
19 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement  
20 which shall include an assessment of the number of jobs to be  
21 generated or lost if the proposed rule takes effect, **[and]** an  
22 agriculture industry impact statement as provided in section 7 of  
23 P.L.1998, c.48 (C.4:1C-10.3) , and a housing affordability impact  
24 statement and a smart growth development impact statement, as  
25 provided in section <sup>2</sup>[32] 31<sup>2</sup> of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
26 (pending before the Legislature as this bill); and

27 (3) Afford all interested persons reasonable opportunity to  
28 submit data, views, or arguments, orally or in writing. The agency  
29 shall consider fully all written and oral submissions respecting the  
30 proposed rule. If within 30 days of the publication of the proposed  
31 rule sufficient public interest is demonstrated in an extension of the  
32 time for submissions, the agency shall provide an additional 30 day  
33 period for the receipt of submissions by interested parties. The  
34 agency shall not adopt the proposed rule until after the end of that  
35 30 day extension.

36 The agency shall conduct a public hearing on the proposed rule  
37 at the request of a committee of the Legislature, or a governmental  
38 agency or subdivision, or if sufficient public interest is shown,  
39 provided such request is made to the agency within 30 days  
40 following publication of the proposed rule in the Register. The  
41 agency shall provide at least 15 days' notice of such hearing, which  
42 shall be conducted in accordance with the provisions of subsection  
43 (g) of this section.

44 The head of each agency shall adopt as part of its rules of  
45 practice adopted pursuant to section 3 of P.L.1968, c.410  
46 (C.52:14B-3) definite standards of what constitutes sufficient public  
47 interest for conducting a public hearing and for granting an  
48 extension pursuant to this paragraph.

1 (4) Prepare for public distribution a report listing all parties  
2 offering written or oral submissions concerning the rule,  
3 summarizing the content of the submissions and providing the  
4 agency's response to the data, views and arguments contained in the  
5 submissions.

6 (b) A rule prescribing the organization of an agency may be  
7 adopted at any time without prior notice or hearing. Such rules  
8 shall be effective upon filing in accordance with section 5 of [this  
9 act] P.L.1968, c.410 (C.52:14B-5) or upon any later date specified  
10 by the agency.

11 (c) If an agency finds that an imminent peril to the public  
12 health, safety, or welfare requires adoption of a rule upon fewer  
13 than 30 days' notice and states in writing its reasons for that finding,  
14 and the Governor concurs in writing that an imminent peril exists, it  
15 may proceed without prior notice or hearing, or upon any  
16 abbreviated notice and hearing that it finds practicable, to adopt the  
17 rule. The rule shall be effective for a period of not more than 60  
18 days unless each house of the Legislature passes a resolution  
19 concurring in its extension for a period of not more than 60  
20 additional days. The rule shall not be effective for more than 120  
21 days unless repromulgated in accordance with normal rule-making  
22 procedures.

23 (d) No rule hereafter adopted is valid unless adopted in  
24 substantial compliance with [this act] P.L.1968, c.410 (C.52:14B-1  
25 et seq.). A proceeding to contest any rule on the ground of  
26 noncompliance with the procedural requirements of [this act]  
27 P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within  
28 one year from the effective date of the rule.

29 (e) An agency may file a notice of intent with respect to a  
30 proposed rule-making proceeding with the Office of Administrative  
31 Law, for publication in the New Jersey Register at any time prior to  
32 the formal notice of action required in subsection (a) of this section.  
33 The notice shall be for the purpose of eliciting the views of  
34 interested parties on an action prior to the filing of a formal rule  
35 proposal. An agency may use informal conferences and  
36 consultations as means of obtaining the viewpoints and advice of  
37 interested persons with respect to contemplated rule-making. An  
38 agency may also appoint committees of experts or interested  
39 persons or representatives of the general public to advise it with  
40 respect to any contemplated rule-making.

41 (f) An interested person may petition an agency to adopt a new  
42 rule, or amend or repeal any existing rule. Each agency shall  
43 prescribe by rule the form for the petition and the procedure for the  
44 submission, consideration and disposition of the petition. The  
45 petition shall state clearly and concisely:

46 (1) The substance or nature of the rule-making which is  
47 requested;

1       (2) The reasons for the request and the petitioner's interest in the  
2 request;

3       (3) References to the authority of the agency to take the  
4 requested action.

5       The petitioner may provide the text of the proposed new rule,  
6 amended rule or repealed rule.

7       Within 60 days following receipt of any such petition, the agency  
8 shall either; (i) deny the petition, giving a written statement of its  
9 reasons; (ii) grant the petition and initiate a rule-making proceeding  
10 within 90 days of granting the petition ; or (iii) refer the matter for  
11 further deliberations which shall be concluded within 90 days of  
12 referring the matter for further deliberations . Upon conclusion of  
13 such further deliberations, the agency shall either deny the petition  
14 and provide a written statement of its reasons or grant the petition  
15 and initiate a rule-making proceeding within 90 days. Upon the  
16 receipt of the petition, the agency shall file a notice stating the name  
17 of the petitioner and the nature of the request with the Office of  
18 Administrative Law for publication in the New Jersey Register.  
19 Notice of formal agency action on such petition shall also be filed  
20 with the Office of Administrative Law for publication in the  
21 Register.

22       If an agency fails to act in accordance with the time frame set  
23 forth in the preceding paragraph, upon written request by the  
24 petitioner, the Director of the Office of Administrative Law shall  
25 order a public hearing on the rule-making petition and shall provide  
26 the agency with a notice of the director's intent to hold the public  
27 hearing if the agency does not. If the agency does not provide  
28 notice of a hearing within 15 days of the director's notice, the  
29 director shall schedule and provide the public with a notice of that  
30 hearing at least 15 days prior thereto. If the public hearing is held  
31 by the Office of Administrative Law, it shall be conducted by an  
32 administrative law judge, a person on assignment from another  
33 agency, a person from the Office of Administrative Law assigned  
34 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-  
35 5), or an independent contractor assigned by the director. The  
36 petitioner and the agency shall participate in the public hearing and  
37 shall present a summary of their positions on the petition, a  
38 summary of the factual information on which their positions on the  
39 petition are based and shall respond to questions posed by any  
40 interested party. The hearing procedure shall otherwise be  
41 consistent with the requirements for the conduct of a public hearing  
42 as prescribed in subsection (g) of section 4 of P.L.1968, c.410  
43 (C.52:14B-4), except that the person assigned to conduct the  
44 hearing shall make a report summarizing the factual record  
45 presented and the arguments for and against proceeding with a rule  
46 proposal based upon the petition. This report shall be filed with the  
47 agency and delivered or mailed to the petitioner. A copy of the

1 report shall be filed with the Legislature along with the petition for  
2 rule-making.

3 (g) All public hearings shall be conducted by a hearing officer,  
4 who may be an official of the agency, a member of its staff, a  
5 person on assignment from another agency, a person from the  
6 Office of Administrative Law assigned pursuant to subsection o. of  
7 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
8 contractor. The hearing officer shall have the responsibility to  
9 make recommendations to the agency regarding the adoption,  
10 amendment or repeal of a rule. These recommendations shall be  
11 made public. At the beginning of each hearing, or series of  
12 hearings, the agency, if it has made a proposal, shall present a  
13 summary of the factual information on which its proposal is based,  
14 and shall respond to questions posed by any interested party.  
15 Hearings shall be conducted at such times and in locations which  
16 shall afford interested parties the opportunity to attend. A verbatim  
17 record of each hearing shall be maintained, and copies of the record  
18 shall be available to the public at no more than the actual cost ,  
19 which shall be that of the agency where the petition for rule-making  
20 originated.

21 (cf: P.L.2001, c.5, s.2)

22

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

25 2. The Legislature finds that:

26 a. The New Jersey Supreme Court, through its rulings in South  
27 Burlington County NAACP v. Mount Laurel, 67 N.J.151 (1975) and  
28 South Burlington County NAACP v. Mount Laurel, 92 N.J.158  
29 (1983), has determined that every municipality in a growth area has  
30 a constitutional obligation to provide through its land use  
31 regulations a realistic opportunity for a fair share of its region's  
32 present and prospective needs for housing for low and moderate  
33 income families.

34 b. In the second Mount Laurel ruling, the Supreme Court stated  
35 that the determination of the methods for satisfying this  
36 constitutional obligation "is better left to the Legislature," that the  
37 court has "always preferred legislative to judicial action in their  
38 field," and that the judicial role in upholding the Mount Laurel  
39 doctrine "could decrease as a result of legislative and executive  
40 action."

41 c. The interest of all citizens, including low and moderate  
42 income families in need of affordable housing, and the needs of the  
43 workforce, would be best served by a comprehensive planning and  
44 implementation response to this constitutional obligation.

45 d. There are a number of essential ingredients to a  
46 comprehensive planning and implementation response, including  
47 the establishment of reasonable fair share housing guidelines and  
48 standards, the initial determination of fair share by officials at the

1 municipal level and the preparation of a municipal housing  
2 element, State review of the local fair share study and housing  
3 element, and continuous State funding for low and moderate income  
4 housing to replace the federal housing subsidy programs which  
5 have been almost completely eliminated.

6 e. The State can maximize the number of low and moderate  
7 income units provided in New Jersey by allowing its municipalities  
8 to adopt appropriate phasing schedules for meeting their fair share,  
9 so long as the municipalities permit a timely achievement of an  
10 appropriate fair share of the regional need for low and moderate  
11 income housing as required by the Mt. Laurel I and II opinions and  
12 other relevant court decisions.

13 f. The State can also maximize the number of low and  
14 moderate income units <sup>2</sup>by creating new affordable housing and<sup>2</sup> by  
15 rehabilitating existing, but substandard, housing in the State[, and,  
16 in order to achieve this end, it is appropriate to permit the transfer  
17 of a limited portion of the fair share obligations among  
18 municipalities in a housing region, so long as the transfer occurs on  
19 the basis of sound, comprehensive planning, with regard to an  
20 adequate housing financing plan, and in relation to the access of  
21 low and moderate income households to employment  
22 opportunities]. Because the Legislature has determined, pursuant  
23 to P.L. , c. (C. ) (pending before the Legislature as this  
24 bill), that it is no longer appropriate or in harmony with the *Mount*  
25 *Laurel* doctrine to permit the transfer of the fair share obligations  
26 among municipalities within a housing region, it is necessary and  
27 appropriate to create a new program <sup>2</sup>to create new affordable  
28 housing and<sup>2</sup> to foster the rehabilitation of existing, but  
29 substandard, housing.

30 g. Since the urban areas are vitally important to the State,  
31 construction, conversion and rehabilitation of housing in our urban  
32 centers should be encouraged. However, the provision of housing  
33 in urban areas must be balanced with the need to provide housing  
34 throughout the State for the free mobility of citizens.

35 h. The Supreme Court of New Jersey in its Mount Laurel  
36 decisions demands that municipal land use regulations affirmatively  
37 afford a reasonable opportunity for a variety and choice of housing  
38 including low and moderate cost housing, to meet the needs of  
39 people desiring to live there. While provision for the actual  
40 construction of that housing by municipalities is not required, they  
41 are encouraged but not mandated to expend their own resources to  
42 help provide low and moderate income housing.

43 i. Certain amendments to the enabling act of the Council on  
44 Affordable Housing are necessary to provide guidance to the  
45 council to ensure consistency with the Legislative intent, while at  
46 the same time clarifying the limitations of the council in its  
47 rulemaking. Although the court has remarked in several decisions

1 that the Legislature has granted the council considerable deference  
2 in its rulemaking, the Legislature retains its power and obligation to  
3 clarify and amend the enabling act from which the council derives  
4 its rulemaking power, from time to time, in order to better guide the  
5 council.

6 j. The Legislature finds that the use of regional contribution  
7 agreements, which permits municipalities to transfer a certain  
8 portion of their fair share housing obligation outside of the  
9 municipal borders, should no longer be utilized as a <sup>2</sup>[tool under  
10 the methodology adopted] mechanism for the creation of  
11 affordable housing<sup>2</sup> by the council.

12 (cf: P.L.1985, c.222, s.2)

13

14 5. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
15 read as follows:

16 4. As used in this act:

17 a. "Council" means the Council on Affordable Housing  
18 established in this act, which shall have primary jurisdiction for the  
19 administration of housing obligations in accordance with sound  
20 regional planning considerations in this State.

21 b. "Housing region" means a geographic area of not less than  
22 two nor more than four contiguous, whole counties which exhibit  
23 significant social, economic and income similarities, and which  
24 constitute to the greatest extent practicable the primary metropolitan  
25 statistical areas as last defined by the United States Census Bureau  
26 prior to the effective date of [this act] P.L.1985, c.222 (C.52:27D-  
27 301 et al.).

28 c. "Low income housing" means housing affordable according  
29 to federal Department of Housing and Urban Development or other  
30 recognized standards for home ownership and rental costs and  
31 occupied or reserved for occupancy by households with a gross  
32 household income equal to 50% or less of the median gross  
33 household income for households of the same size within the  
34 housing region in which the housing is located.

35 d. "Moderate income housing" means housing affordable  
36 according to federal Department of Housing and Urban  
37 Development or other recognized standards for home ownership  
38 and rental costs and occupied or reserved for occupancy by  
39 households with a gross household income equal to more than 50%  
40 but less than 80% of the median gross household income for  
41 households of the same size within the housing region in which the  
42 housing is located.

43 e. "Resolution of participation" means a resolution adopted by  
44 a municipality in which the municipality chooses to prepare a fair  
45 share plan and housing element in accordance with this act.

46 f. "Inclusionary development" means a residential housing  
47 development in which a substantial percentage of the housing units

1 are provided for a reasonable income range of low and moderate  
2 income households.

3 g. "Conversion" means the conversion of existing commercial,  
4 industrial, or residential structures for low and moderate '[. or  
5 middle]' income housing purposes where a substantial percentage  
6 of the housing units are provided for a reasonable income range of  
7 low and moderate '[. or middle]' income households.

8 h. "Development" means any development for which  
9 permission may be required pursuant to the "Municipal Land Use  
10 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

11 i. "Agency" means the New Jersey Mortgage and Housing  
12 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
13 seq.).

14 j. "Prospective need" means a projection of housing needs  
15 based on development and growth which is reasonably likely to  
16 occur in a region or a municipality, as the case may be, as a result  
17 of actual determination of public and private entities. In  
18 determining prospective need, consideration shall be given to  
19 approvals of development applications, real property transfers and  
20 economic projections prepared by the State Planning Commission  
21 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
22 196 et seq.).

23 k. "Disabled person" means a person with a physical disability,  
24 infirmity, malformation or disfigurement which is caused by bodily  
25 injury, birth defect, aging or illness including epilepsy and other  
26 seizure disorders, and which shall include, but not be limited to, any  
27 degree of paralysis, amputation, lack of physical coordination,  
28 blindness or visual impediment, deafness or hearing impediment,  
29 muteness or speech impediment or physical reliance on a service or  
30 guide dog, wheelchair, or other remedial appliance or device.

31 l. "Adaptable" means constructed in compliance with the  
32 technical design standards of the barrier free subcode adopted by  
33 the Commissioner of Community Affairs pursuant to the "State  
34 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
35 et seq.) and in accordance with the provisions of section 5 of  
36 P.L.2005, c.350 (C.52:27D-123.15).

37 m. '["Middle income housing" means housing affordable  
38 according to federal Department of Housing and Urban  
39 Development or other recognized standards for home ownership  
40 and rental costs and occupied or reserved for occupancy by  
41 households with a gross household income equal to or more than  
42 80% but less than 110% of the median gross household income for  
43 households of the same size within the housing region in which the  
44 housing is located.

45 n.]' "Very low income housing" means housing affordable  
46 according to federal Department of Housing and Urban  
47 Development or other recognized standards for home ownership  
48 and rental costs and occupied or reserved for occupancy by

1 households with a gross household income equal to 30% or less of  
2 the median gross household income for households of the same size  
3 within the housing region in which the housing is located.

4 (cf: P.L.2005, c.350, s.2)

5

6 6. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
7 read as follows:

8 7. It shall be the duty of the council, seven months after the  
9 confirmation of the last member initially appointed to the council,  
10 or January 1, 1986, whichever is earlier, and from time to time  
11 thereafter, to:

12 a. Determine housing regions of the State;

13 b. Estimate the present and prospective need for low and  
14 moderate income housing at the State and regional levels <sup>1</sup>[. The  
15 present and prospective need for moderate income households with  
16 a gross household income of less than 80% of the median gross  
17 household income shall be calculated separately from the present  
18 and prospective need for middle income households with a gross  
19 household income of between 80% and 110% of the median gross  
20 household income ]<sup>1</sup>;

21 c. Adopt criteria and guidelines for:

22 (1) Municipal determination of its present and prospective fair  
23 share of the housing need in a given region which shall be  
24 computed for a 10-year period.

25 Municipal fair share shall be determined after crediting on a one-  
26 to-one basis each current unit of low and moderate income <sup>1</sup>[and  
27 middle income]<sup>1</sup> housing of adequate standard, including any such  
28 housing constructed or acquired as part of a housing program  
29 specifically intended to provide housing for low and moderate  
30 income <sup>1</sup>[and middle income]<sup>1</sup> households. Notwithstanding any  
31 other law to the contrary, a municipality shall be entitled to a credit  
32 for a unit if it demonstrates that (a) the municipality issued a  
33 certificate of occupancy for the unit, which was either newly  
34 constructed or rehabilitated between April 1, 1980 and December  
35 15, 1986; (b) a construction code official certifies, based upon a  
36 visual exterior survey, that the unit is in compliance with pertinent  
37 construction code standards with respect to structural elements,  
38 roofing, siding, doors and windows; (c) the household occupying  
39 the unit certifies in writing, under penalty of perjury, that it receives  
40 no greater income than that established pursuant to section 4 of  
41 P.L.1985, c.222 (C.52:27D-304) to qualify for moderate <sup>1</sup>[or  
42 middle]<sup>1</sup> income housing; and (d) the unit for which credit is  
43 sought is affordable to low and moderate income households under  
44 the standards established by the council at the time of filing of the  
45 petition for substantive certification. It shall be sufficient if the  
46 certification required in subparagraph (c) is signed by one member  
47 of the household. A certification submitted pursuant to this

1 paragraph shall be reviewable only by the council or its staff and  
2 shall not be a public record;

3 '[In order to avoid dilution of the constitutional obligation to  
4 provide housing affordable to households with a gross household  
5 income less than 80% of the median gross household income, under  
6 no circumstance, including but not limited to credits for housing  
7 constructed or rehabilitated between April 1, 1980 and December  
8 15, 1986 and secondary sources such as filtering, shall the Council  
9 credit housing affordable to households with a gross household  
10 income equal to more than 80% but less than 110% of the median  
11 gross household income for households of the same size within the  
12 housing region in which the housing is located against the present  
13 and prospective fair share of the housing need in a given region  
14 calculated based on households with a gross household income less  
15 than 80% of the median gross household income for households of  
16 the same size within the housing region in which the housing is  
17 located;]'

18 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
19 certification granted by the council prior to November 21, 1994, or  
20 to a judgment of compliance entered by any court of competent  
21 jurisdiction prior to that date. Additionally, any municipality that  
22 received substantive certification or a judgment of compliance prior  
23 to November 21, 1994 and filed a motion prior to November 21,  
24 1994 to amend substantive certification or a judgment of  
25 compliance for the purpose of obtaining credits, shall be entitled to  
26 a determination of its right to credits pursuant to the standards  
27 established by the Legislature prior to P.L.1995, c.81. Any  
28 municipality that filed a motion prior to November 21, 1994 for the  
29 purpose of obtaining credits, which motion was supported by the  
30 results of a completed survey performed pursuant to council rules,  
31 shall be entitled to a determination of its right to credits pursuant to  
32 the standards established by the Legislature prior to P.L.1995, c.81;

33 (2) Municipal adjustment of the present and prospective fair  
34 share based upon available vacant and developable land,  
35 infrastructure considerations or environmental or historic  
36 preservation factors and adjustments shall be made whenever:

37 (a) The preservation of historically or important architecture and  
38 sites and their environs or environmentally sensitive lands may be  
39 jeopardized,

40 (b) The established pattern of development in the community  
41 would be drastically altered,

42 (c) Adequate land for recreational, conservation or agricultural  
43 and farmland preservation purposes would not be provided,

44 (d) Adequate open space would not be provided,

45 (e) The pattern of development is contrary to the planning  
46 designations in the State Development and Redevelopment Plan  
47 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
48 (C.52:18A-196 et seq.),

1 (f) Vacant and developable land is not available in the  
2 municipality, and

3 (g) Adequate public facilities and infrastructure capacities are  
4 not available, or would result in costs prohibitive to the public if  
5 provided; and

6 (3) (Deleted by amendment, P.L.1993, c.31).

7 d. Provide population and household projections for the State  
8 and housing regions;

9 e. In its discretion, place a limit, based on a percentage of  
10 existing housing stock in a municipality and any other criteria  
11 including employment opportunities which the council deems  
12 appropriate, upon the aggregate number of units which may be  
13 allocated to a municipality as its fair share of the region's present  
14 and prospective need for low and moderate <sup>1</sup>~~['and middle income']~~<sup>1</sup>  
15 income housing. No municipality shall be required to address a fair  
16 share of housing units affordable to households with a gross  
17 household income of less than 80% of the median gross household  
18 income beyond 1,000 units within ten years from the grant of  
19 substantive certification, unless it is demonstrated, following  
20 objection by an interested party and an evidentiary hearing, based  
21 upon the facts and circumstances of the affected municipality that it  
22 is likely that the municipality through its zoning powers could  
23 create a realistic opportunity for more than 1,000 ~~['low and~~  
24 ~~moderate']~~ <sup>1</sup>~~['housing units affordable to households with a gross~~  
25 ~~household income of less than 80% of the median gross household]~~  
26 low and moderate<sup>1</sup> income units within that ten-year period. For  
27 the purposes of this section, the facts and circumstances which shall  
28 determine whether a municipality's fair share shall exceed 1,000  
29 units, as provided above, shall be a finding that the municipality has  
30 issued more than 5,000 certificates of occupancy for residential  
31 units in the ten-year period preceding the petition for substantive  
32 certification in connection with which the objection was filed.

33 For the purpose of crediting low and moderate income housing  
34 units in order to arrive at a determination of present and prospective  
35 fair share, as set forth in paragraph (1) of subsection c. of this  
36 section, housing units comprised in a community residence for the  
37 developmentally disabled, as defined in section 2 of P.L.1977,  
38 c.448 (C.30:11B-2), shall be fully credited pursuant to rules  
39 promulgated or to be promulgated by the council, to the extent that  
40 the units are affordable to persons of low and moderate income and  
41 are available to the general public.

42 The council, with respect to any municipality seeking substantive  
43 certification, shall require that a minimum <sup>2</sup>~~['number']~~ <sup>2</sup>percentage<sup>2</sup>  
44 of housing units <sup>2</sup>[be reserved for occupancy by low and  
45 moderate]<sup>2</sup> <sup>1</sup>~~['and middle income']~~<sup>1</sup> <sup>2</sup>[households, or such  
46 percentage as may be consistent with the rules of the council  
47 regarding the percentage to be reserved relative to the density of

1 development, for] in<sup>2</sup> any residential development resulting from a  
2 zoning change made to a <sup>2</sup>previously<sup>2</sup> non-residentially-zoned  
3 property <sup>2</sup>[changing it from or to residential use within the 12-  
4 month period preceding or succeeding the filing of the application  
5 for residential development.] , where the change in zoning  
6 precedes or follows the application for residential development by  
7 no more than 24 months, be reserved for occupancy by low or  
8 moderate income households, which percentage shall be determined  
9 by the council based on economic feasibility with consideration for  
10 the proposed density of development.<sup>2</sup>

11 In carrying out the above duties, including, but not limited to,  
12 present and prospective need estimations the council shall give  
13 appropriate weight to pertinent research studies, government  
14 reports, decisions of other branches of government, implementation  
15 of the State Development and Redevelopment Plan prepared  
16 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196  
17 et seq.) and public comment. To assist the council, the State  
18 Planning Commission established under that act shall provide the  
19 council annually with economic growth, development and decline  
20 projections for each housing region for the next ten years. The  
21 council shall develop procedures for periodically adjusting regional  
22 need based upon the low and moderate income housing that is  
23 provided in the region through any federal, State, municipal or  
24 private housing program.

25 No housing unit subject to the provisions of section 5 of  
26 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
27 barrier free subcode adopted by the Commissioner of Community  
28 Affairs pursuant to the "State Uniform Construction Code Act,"  
29 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for  
30 inclusion in the municipal fair share plan certified by the council  
31 unless the unit complies with the requirements set forth thereunder.

32 <sup>1</sup>[The requirements of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before  
33 the Legislature as this bill) for the calculation and crediting of  
34 affordable housing needs for middle income households shall be  
35 phased in proportionally over a five-year period, such that on the  
36 first day of the 61st month next following enactment of P.L. \_\_\_\_\_,  
37 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), the  
38 housing needs of middle income households will be fully addressed  
39 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et  
40 al.). Affordability controls for middle income housing shall not  
41 extend beyond a ten-year period, and any rules of the council  
42 requiring a percentage of resale profit return to the municipality  
43 upon resale of a housing unit after the expiration of any  
44 affordability controls shall not be applied to housing reserved for  
45 middle income households.]<sup>1</sup>

46 (cf: P.L.2005, c.350, s.4)

1       7. (New section) The council shall coordinate and review the  
2 housing elements as filed pursuant to section 11 of P.L.1985, c.222,  
3 (C.52:27D-311), and the housing activities under section 20 of  
4 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to  
5 ensure that at least <sup>2</sup>[25] 13<sup>2</sup> percent of the housing units made  
6 available for occupancy by low-income <sup>1</sup>[.]<sup>1</sup> and moderate income  
7 <sup>1</sup>[and middle income]<sup>1</sup> households will be reserved for occupancy  
8 by very low income households, as that term is defined pursuant to  
9 section 4 of P.L.1985, c.222, (C.52:27D-304). Nothing in this  
10 section shall require that a specific percentage of the units in any  
11 specific <sup>1</sup>[municipality] project<sup>1</sup> be reserved as very low income  
12 housing; provided, however, that a municipality shall not receive  
13 bonus credits for the provision of housing units reserved for  
14 occupancy by very low income households unless the <sup>2</sup>[25] 13<sup>2</sup>  
15 percent target has been exceeded within that municipality. The  
16 council shall coordinate all efforts to meet the goal of this section in  
17 a manner that will result in a balanced number of housing units  
18 being reserved for very low income households throughout all  
19 housing regions. <sup>1</sup>For the purposes of this section, housing  
20 activities under section 20 of P.L.1985, c.222 (C.52:27D-320) shall  
21 include any project-based assistance provided from the "New Jersey  
22 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
23 (C.52:27D-287.1 et seq.) <sup>2</sup>, regardless of whether the housing  
24 activity is counted toward the municipal obligation under the "Fair  
25 Housing Act," P.L.1985, c.222( C.52:27D-301 et al<sup>2</sup> .<sup>1</sup>

26  
27       8. (New section) a. The council may authorize a municipality  
28 that has <sup>1</sup>[been granted] petitioned for<sup>1</sup> substantive certification, or  
29 that has been so authorized by a court of competent jurisdiction <sup>1</sup>,  
30 and which has adopted a municipal development fee ordinance<sup>1</sup> to  
31 impose and collect development fees from developers of residential  
32 property, in accordance with rules promulgated by the council.  
33 Each amount collected shall be deposited and shall be accounted for  
34 separately, by payer and date of deposit.

35       <sup>1</sup>A municipality may not spend or commit to spend any  
36 affordable housing development fees, including Statewide non-  
37 residential fees collected and deposited into the municipal  
38 affordable housing trust fund, without first obtaining the council's  
39 approval of the expenditure. The council shall promulgate  
40 regulations regarding the establishment, administration and  
41 enforcement of the expenditure of affordable housing development  
42 fees by municipalities. The council shall have exclusive  
43 jurisdiction regarding the enforcement of these regulations,  
44 provided that any municipality which is not in compliance with the  
45 regulations adopted by the council may be subject to forfeiture of  
46 any or all funds remaining within its municipal trust fund. Any  
47 funds so forfeited shall be deposited into the "New Jersey

1 Affordable Housing Trust Fund" established pursuant to section 20  
2 of P.L.1985, c.222 (C.52:27D-320).<sup>1</sup>

3 b. A municipality shall deposit all fees collected <sup>1</sup>, whether or  
4 not such collections were derived from fees imposed upon non-  
5 residential or residential construction<sup>1</sup> into a trust fund dedicated to  
6 those purposes as required under this section, and such additional  
7 purposes as may be approved by the council. <sup>1</sup>**[A municipality**  
8 **collecting at least \$1,000 per year in development fees shall deposit**  
9 **the funds collected in accordance with its cash management plan in**  
10 **the manner required pursuant to N.J.S.40A:5-14.]**<sup>1</sup>

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

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

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

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

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

33 (4) Municipalities may contract with a private or public entity to  
34 administer any part of its housing element and fair share plan,  
35 including the requirement for affordability assistance, or any  
36 program or activity for which the municipality expends  
37 development fee proceeds, in accordance with rules of the council.

38 (5) Not more than 20 percent of the revenues collected from  
39 development fees <sup>1</sup>**[each year]**<sup>1</sup> shall be expended on  
40 administration, in accordance with rules of the council.

41 d. The council shall establish a time by which all development  
42 fees collected within a calendar year shall be expended; provided,  
43 however, that all fees shall be <sup>1</sup>**[required to be expended]**  
44 committed for expenditure<sup>1</sup> within four years from the date of  
45 collection. A municipality that fails to <sup>2</sup>commit to<sup>2</sup> expend the  
46 balance required in the development fee trust fund by the time set  
47 forth in this section shall be required by the council to transfer the

1 remaining unspent balance at the end of the four-year period to the  
2 <sup>1</sup>New Jersey Affordable Housing Trust Fund,<sup>1</sup> established  
3 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as  
4 amended by P.L. , c. (C. ) (pending before the  
5 Legislature as this bill), to be used in the housing region of the  
6 transferring municipality for the authorized purposes of that fund.

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

12 This section shall not apply to the collection of a Statewide  
13 development fee imposed upon non-residential development  
14 pursuant to sections <sup>1</sup>~~[33 through 39]~~ 32 through 38<sup>1</sup> of P.L. ,  
15 c. (C. ) (pending before the Legislature as this bill) <sup>1</sup>by the  
16 State Treasurer, when such collection is not authorized to be  
17 retained by a municipality<sup>1</sup>.

18  
19 9. (New section) a. The council may authorize a municipality  
20 that has <sup>1</sup>~~[been granted]~~ petitioned for<sup>1</sup> substantive certification to  
21 impose and collect payments-in-lieu of constructing affordable units  
22 on site <sup>1</sup>upon the construction of residential development,<sup>1</sup> which  
23 payments may be imposed and collected <sup>1</sup>~~[whenever a developer of~~  
24 ~~residential housing is unable to provide all of the affordable housing~~  
25 ~~units required under the fair share housing methodology,]~~<sup>1</sup> as  
26 provided pursuant to the rules of the council. Payment-in-lieu fees  
27 shall be deposited into a trust fund, and accounted for separately  
28 from any other fees collected by a municipality. <sup>1</sup>~~[Payments-in-~~  
29 ~~lieu shall be expended solely to construct new units or to~~  
30 ~~substantially rehabilitate existing substandard housing units.]~~<sup>1</sup>  
31 Whenever a payment-in-lieu is charged by a municipality <sup>1</sup>~~[,]~~<sup>1</sup>  
32 pursuant to this subsection <sup>1</sup>~~,~~<sup>1</sup> a development fee authorized  
33 pursuant to section 8 of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill) shall not be charged in connection with the  
35 same development.

36 b. <sup>1</sup>~~[Collected]~~ A municipality shall commit to expend  
37 collections<sup>1</sup> from payments-in-lieu imposed pursuant to subsection  
38 a. of this section <sup>1</sup>~~[shall be expended]~~<sup>1</sup> within four years of the date  
39 of collection. The council may extend this deadline if the  
40 municipality submits sufficient proof of building or other permits,  
41 or other efforts concerning land acquisition or project development.  
42 The council shall provide such administrative assistance as may be  
43 required to aid in the construction of affordable housing units.  
44 <sup>1</sup>~~[Payment-in-lieu-of revenue collected pursuant to subsection a. of~~  
45 ~~this section shall be spent solely on the construction of new~~  
46 ~~affordable housing or substantial rehabilitation of existing housing~~

1 for conversion to affordable housing.]" A municipality that "[is  
2 unable to construct new affordable housing because of a lack of  
3 available land resources, or that does not have available substandard  
4 housing to rehabilitate,] fails to commit to expend the amounts  
5 collected pursuant to this section within the timeframes established  
6 shall be required to transfer any unexpended revenue collected  
7 pursuant to subsection a. of this section to the "New Jersey  
8 Affordable Housing Trust Fund," established pursuant to section  
9 20 of P.L.1985, c.222 (C.52:27D-320), to be used within the same  
10 housing region for the authorized purposes of that fund, in  
11 accordance with regulations promulgated by the council.

12

13 10. (New section) The council shall maintain on its website, and  
14 also publish on a regular basis, an up-to-date municipal status report  
15 concerning the petitions for substantive certification of each  
16 municipality that has submitted to the council's jurisdiction, and  
17 shall collect and publish information concerning the number of  
18 housing units actually constructed, construction starts, certificates  
19 of occupancy granted, rental units maintained, and the number of  
20 housing units transferred or sold within the previous 12 month  
21 period. With respect to units actually constructed, the information  
22 shall specify the characteristics of the housing, including housing  
23 type, tenure, affordability level, number of bedrooms, and whether  
24 occupancy is reserved for families, senior citizens, or other special  
25 populations. "[In addition] No later than 60 months after the  
26 effective date of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill)", the council shall require each  
28 municipality, as a condition of substantive certification, to provide,  
29 in a standardized electronic media format as determined by the  
30 council, the details of the fair share plan as adopted by the  
31 municipality and approved by the council. The council shall  
32 publish and maintain such approved plans on its website.

33

34 11. (New section) Sections 11 through 14 of P.L. ,  
35 c. (C. ) (pending before the Legislature as this bill) shall be  
36 known and may be cited as the "Housing Rehabilitation and  
37 Assistance Program Act."

38

39 12. (New section) The Legislature finds and declares that:

40 a. The transfer of a portion of the fair share obligations among  
41 municipalities has proven to not be a viable method of ensuring that  
42 an adequate supply and variety of housing choices are provided in  
43 municipalities experiencing growth. Therefore, the use of a  
44 regional contribution agreement shall no longer be permitted under  
45 P.L.1985, c.222 (C.52:27D-301 et al.).

46 b. Although the elimination of the regional contribution  
47 agreement as a tool for the production of affordable housing

1 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on  
2 some proposed agreements awaiting approval, it is for a public  
3 purpose and for the public good that such contracts be declared void  
4 for the current and future housing obligation rounds.

5 c. There is a need to assist municipalities in the rehabilitation  
6 of housing for occupancy by low and moderate income households.  
7 To this end, a specific program for housing rehabilitation by  
8 municipalities would best serve this need. It is the intent of the  
9 Legislature that this program, as well as funds earmarked for the  
10 purposes of the program, will be utilized especially in urban areas,  
11 which were the main recipients of regional contribution agreements,  
12 to continue to upgrade housing stock in order to provide a wide  
13 variety and choice of housing for persons living in those areas.

14 d. There is also a need to provide funding to municipalities to  
15 create additional incentives and assistance for the production of  
16 safe, decent, and affordable rental and other housing.

17

18 13. (New section) a. There is established within the Department  
19 of Community Affairs <sup>2</sup>[a] an Urban<sup>2</sup> Housing <sup>2</sup>Assistance<sup>2</sup>  
20 <sup>1</sup>[Rehabilitation]<sup>1</sup> Program for the purposes of assisting certain  
21 municipalities in the provision of housing through the rehabilitation  
22 of existing buildings <sup>1</sup>, or the construction of affordable housing<sup>1</sup>.

23 b. Within the program there shall be established a trust fund to  
24 be known as the <sup>1</sup>["Housing Rehabilitation] "Urban Housing<sup>1</sup>  
25 Assistance Fund," into which may be deposited:

26 (1) monies which may be available to the fund from any other  
27 programs established for the purposes of housing rehabilitation<sup>1</sup>,  
28 other than monies from the "New Jersey Affordable Housing Trust  
29 Fund," established pursuant to section 20 of P.L.1985, c.222  
30 (C.52:27D-320)<sup>1</sup>;

31 (2) monies appropriated by the Legislature to the fund; and

32 (3) any other funds made available through State or federal  
33 housing programs for the purposes of producing affordable  
34 housing<sup>1</sup>, other than monies from the "New Jersey Affordable  
35 Housing Trust Fund," established pursuant to section 20 of  
36 P.L.1985, c.222 (C.52:27D-320)<sup>1</sup>.

37 c. The Commissioner of Community Affairs shall develop a  
38 strategic five-year plan for the program aimed at <sup>2</sup>[:

39 (1) identifying and estimating the number of substandard  
40 housing units within the State; and

41 (2)]<sup>2</sup> developing strategies to assist municipalities in creating  
42 rehabilitation programs <sup>1</sup>and other programs to produce safe, decent  
43 housing within the municipality<sup>1</sup>.

44 d. The commissioner may award a housing <sup>1</sup>[rehabilitation]<sup>1</sup>  
45 grant to a municipality that qualifies for aid pursuant to P.L.1978,  
46 c.14 (C.52:27D-178 et seq.) and that has submitted a <sup>2</sup>[copy of its

1 housing plan to the department, including]<sup>2</sup> <sup>1</sup>[a survey] <sup>2</sup>[an  
 2 assessment<sup>1</sup> of the]<sup>2</sup> <sup>1</sup>[number] <sup>2</sup>[extent<sup>1</sup> of housing units in need  
 3 of rehabilitation <sup>1</sup>or in need of construction<sup>1</sup> within the  
 4 municipality]<sup>2</sup> a <sup>2</sup>valid application to the Department of  
 5 Community Affairs which details the manner in which the  
 6 municipality will utilize funding in order to meet the municipality's  
 7 need to rehabilitate or create safe, decent, and affordable housing<sup>2</sup> .

8 e. The commissioner shall promulgate rules and regulations,  
 9 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
 10 (C.52:14B-1 et seq.), to effectuate the purposes of P.L. \_\_\_\_\_,  
 11 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill); provided  
 12 that the regulations shall permit a municipality broad discretion in  
 13 shaping its housing rehabilitation <sup>1</sup>and construction<sup>1</sup> program <sup>1</sup>, but  
 14 shall not permit a municipality to provide assistance to any  
 15 household having an income greater than 120% of median  
 16 household income for the housing region<sup>1</sup>. The department may  
 17 require a return of a grant upon its determination that a municipality  
 18 is not [rehabilitating housing] <sup>2</sup>performing<sup>2</sup> in accordance with its  
 19 <sup>2</sup>[plan] grant<sup>2</sup> or with the regulations.

20

21 14. (New section) a. There shall be appropriated annually from  
 22 the amounts <sup>1</sup>[required to be set aside from the collections of the  
 23 realty transfer fees pursuant to section 4 of P.L.1968, c.49 (C.46:15-  
 24 8)] collected by the State Treasurer from the imposition of  
 25 Statewide non-residential development fees and retained by the  
 26 State pursuant to P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
 27 Legislature as this bill)<sup>1</sup>, the sum of \$20,000,000 for deposit into  
 28 the <sup>1</sup>["Housing Rehabilitation] "Urban Housing<sup>1</sup> Assistance Fund,"  
 29 established pursuant to section 13 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
 30 (pending before the Legislature as this bill), to be used for the  
 31 purposes authorized under that section. <sup>1</sup>Any surplus amounts  
 32 remaining after crediting the "Urban Housing Assistance Fund," in  
 33 the amount required under this section from the collection of  
 34 Statewide non-residential development fees, shall be annually  
 35 appropriated to the "New Jersey Affordable Housing Trust Fund,"  
 36 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-  
 37 320).<sup>1</sup>

38 b. In the event the full amount required to be transferred  
 39 pursuant to subsection a. of this section is not transferred in any  
 40 fiscal year, the Legislature shall subsequently appropriate in the  
 41 same fiscal year from the General Fund an amount equal to the  
 42 difference between the amount actually transferred and the amount  
 43 required to be transferred pursuant to subsection a. of this section,  
 44 so that the total funds made available to the <sup>1</sup>["Housing  
 45 Rehabilitation] "Urban Housing<sup>1</sup> Assistance Fund" annually shall

1 be equal to the amount established pursuant to subsection a. of this  
2 section.

3

4 <sup>1</sup>[15. Section 4 of P.L.1968, c.49 (C.46:15-8) is amended to  
5 read as follows:

6 4. a. The proceeds of the fees collected by the county recording  
7 officer, as authorized by P.L.1968, c.49 (C.46:15-5 et seq.), shall be  
8 accounted for and remitted to the county treasurer.

9 b. (1) The county portion of the basic fee collected pursuant to  
10 paragraph (1) of subsection a. of section 3 of P.L.1968, c.49  
11 (C.46:15-7) shall be retained by the county treasurer for the use of  
12 the county.

13 (2) The State portion of the basic fee, the additional fee, and the  
14 general purpose fee shall be paid to the State Treasurer for the use  
15 of the State, provided that the portion of the fees collected pursuant  
16 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49  
17 (C.46:15-7) shall be accounted for separately and remitted by  
18 separate transmittal to the State Treasurer. Payments shall be made  
19 to the State Treasurer on the tenth day of each month following the  
20 month of collection.

21 c. (1) Amounts, not in excess of \$25,000,000, paid during the  
22 State fiscal year to the State Treasurer from the payment of the  
23 State portion of the basic fee shall be credited to the "Shore  
24 Protection Fund" created pursuant to section 1 of P.L.1992, c.148  
25 (C.13:19-16.1), in the manner established under that section.

26 (2) In addition to the amounts credited to the "Shore Protection  
27 Fund" pursuant to paragraph (1) of this subsection, amounts equal  
28 to \$12,000,000 in each of the first 10 years after the date of  
29 enactment of the "Highlands Water Protection and Planning Act,"  
30 P.L.2004, c.120 (C.13:20-1 et al.) and to \$5,000,000 in each year  
31 thereafter, paid during the State fiscal year to the State Treasurer  
32 from the payment of fees collected by the county recording officer  
33 other than the additional fee of \$0.75 for each \$500.00 of  
34 consideration or fractional part thereof recited in the deed in excess  
35 of \$150,000.00 shall be credited to the "Highlands Protection Fund"  
36 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), in  
37 the manner established under that section. No monies shall be  
38 credited to the "Highlands Protection Fund" pursuant to this  
39 paragraph until and unless the full amount of \$25,000,000 has first  
40 been credited to the "Shore Protection Fund" pursuant to paragraph  
41 (1) of this subsection.

42 (3) In addition to the amounts credited to the "Shore Protection  
43 Fund" pursuant to paragraph (1) of this subsection, amounts equal  
44 to \$20,000,000 annually paid during the State fiscal year to the  
45 State Treasurer from the payment of fees collected by the county  
46 recording officer, other than the additional fee of \$0.75 for each  
47 \$500.00 of consideration or fractional part thereof recited in the  
48 deed in excess of \$150,000.00, shall be credited to the "Housing

1 Rehabilitation Assistance Fund” established pursuant to section 13  
2 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this  
3 bill), in the manner established under that section. No monies shall  
4 be credited to the “Housing Rehabilitation Assistance Fund”  
5 pursuant to this paragraph until and unless the full amount of  
6 \$25,000,000 has first been credited to the "Shore Protection Fund"  
7 pursuant to paragraph (1) of this subsection.

8 d. All amounts paid to the State Treasurer by separate  
9 transmittal from the payment of the additional fee shall be credited  
10 to the **【Neighborhood Preservation Nonlapsing Revolving Fund】**  
11 **【New Jersey Affordable Housing Trust Fund】** established pursuant to  
12 P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established  
13 under section 20 thereof (C.52:27D-320).

14 (cf: P.L.2004, c.120, s.61) **】**<sup>1</sup>

15

16 **【16.】** 15.<sup>1</sup> Section 11 of P.L.1985, c.222 (C.52:27D-311) is  
17 amended to read as follows:

18 11. a. In adopting its housing element, the municipality may  
19 provide for its fair share of low and moderate **【and middle】**<sup>1</sup>  
20 income housing by means of any technique or combination of  
21 techniques which provide a realistic opportunity for the provision of  
22 the fair share. The housing element shall contain an analysis  
23 demonstrating that it will provide such a realistic opportunity, and  
24 the municipality shall establish that its land use and other relevant  
25 ordinances have been revised to incorporate the provisions for low  
26 and moderate **【and middle】**<sup>1</sup> income housing. In preparing the  
27 housing element, the municipality shall consider the following  
28 techniques for providing low and moderate **【and middle】**<sup>1</sup> income  
29 housing within the municipality, as well as such other techniques as  
30 may be published by the council or proposed by the municipality:

31 (1) Rezoning for densities necessary to assure the economic  
32 viability of any inclusionary developments, either through  
33 mandatory set-asides or density bonuses, as may be necessary to  
34 meet all or part of the municipality's fair share in accordance with  
35 the regulations of the council and the provision of subsection h. of  
36 this section;

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

39 (3) Determination of measures that the municipality will take to  
40 assure that low and moderate **【and middle】**<sup>1</sup> income units remain  
41 affordable to low and moderate **【and middle】**<sup>1</sup> income households  
42 for an appropriate period of not less than six years;

43 (4) A plan for infrastructure expansion and rehabilitation if  
44 necessary to assure the achievement of the municipality's fair share  
45 of low and moderate income housing;

- 1 (5) Donation or use of municipally owned land or land  
2 condemned by the municipality for purposes of providing low and  
3 moderate income housing;
- 4 (6) Tax abatements for purposes of providing low and moderate  
5 income housing;
- 6 (7) Utilization of funds obtained from any State or federal  
7 subsidy toward the construction of low and moderate income  
8 housing;
- 9 (8) Utilization of municipally generated funds toward the  
10 construction of low and moderate 'and middle' income housing;  
11 and
- 12 (9) The purchase of privately owned real property used for  
13 residential purposes at the value of all liens secured by the property;  
14 excluding any tax liens, notwithstanding that the total amount of  
15 debt secured by liens exceeds the appraised value of the property,  
16 pursuant to regulations promulgated by the Commissioner of  
17 Community Affairs pursuant to subsection b. of section 41 of  
18 P.L.2001, c.126 (C.52:27D-311.2).
- 19 b. The municipality may provide for a phasing schedule for the  
20 achievement of its fair share of low and moderate 'and middle'  
21 income housing.
- 22 c. ~~【The municipality may propose that a portion of its fair~~  
23 ~~share be met through a regional contribution agreement. The~~  
24 ~~housing element shall demonstrate, however, the manner in which~~  
25 ~~that portion will be provided within the municipality if the regional~~  
26 ~~contribution agreement is not entered into. The municipality shall~~  
27 ~~provide a statement of its reasons for the proposal.】 (Deleted by  
28 amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_) (pending before the Legislature as  
29 this bill)~~
- 30 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
31 require a municipality to raise or expend municipal revenues in  
32 order to provide low and moderate 'and middle' income housing.
- 33 e. When a municipality's housing element includes the  
34 provision of rental housing units in a community residence for the  
35 developmentally disabled, as defined in section 2 of P.L.1977,  
36 c.448 (C.30:11B-2), which will be affordable to persons of low and  
37 moderate income, and for which adequate measures to retain such  
38 affordability pursuant to paragraph (3) of subsection a. of this  
39 section are included in the housing element, those housing units  
40 shall be fully credited as permitted under the rules of the council  
41 towards the fulfillment of the municipality's fair share of low and  
42 moderate income housing.
- 43 f. It having been determined by the Legislature that the  
44 provision of housing under ~~【this act】~~ P.L.1985, c.222 (C.52:27D-  
45 301 et al.) is a public purpose, a municipality or municipalities may  
46 utilize public monies to make donations, grants or loans of public  
47 funds for the rehabilitation of deficient housing units and the

1 provision of new or substantially rehabilitated housing for low and  
2 moderate <sup>1</sup>['and middle'] persons, providing that any private  
3 advantage is incidental.

4 g. A municipality which has received substantive certification  
5 from the council, and which has actually effected the construction  
6 of the affordable housing units it is obligated to provide, may  
7 amend its affordable housing element or zoning ordinances without  
8 the approval of the council.

9 h. Whenever affordable housing units are proposed to be  
10 provided through an inclusionary development, a municipality shall  
11 provide, through its zoning powers, incentives to the developer,  
12 which <sup>1</sup>['may'] shall include increased densities and reduced costs,  
13 in accordance with the regulations of the council and this  
14 subsection.

15 <sup>2</sup>i. The council, upon the application of a municipality and a  
16 developer, may approve reduced affordable housing set-asides or  
17 increased densities to ensure the economic feasibility of an  
18 inclusionary development.<sup>2</sup>

19 (cf: P.L.2001, c.441, s.1)

20

21 <sup>1</sup>['17.] 16. Section 12 of P.L.1985, c.222 (52:27D-312) is  
22 amended to read as follows:

23 12. a. **[A]** Except as prohibited under P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
24 (pending before the Legislature as this bill), a municipality may  
25 propose the transfer of up to 50% of its fair share to another  
26 municipality within its housing region by means of a contractual  
27 agreement into which two municipalities voluntarily enter. A  
28 municipality may also propose a transfer by contracting with the  
29 agency or another governmental entity designated by the council if  
30 the council determines that the municipality has exhausted all  
31 possibilities within its housing region. A municipality proposing to  
32 transfer to another municipality, whether directly or by means of a  
33 contract with the agency or another governmental entity designated  
34 by the council, shall provide the council with the housing element  
35 and statement required under subsection c. of section 11 of  
36 P.L.1985, c.222 (C.52:27D-311), and shall request the council to  
37 determine a match with a municipality filing a statement of intent  
38 pursuant to subsection e. of this section. Except as provided in  
39 subsection b. of this section, the agreement may be entered into  
40 upon obtaining substantive certification under section 14 of  
41 P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The  
42 regional contribution agreement entered into shall specify how the  
43 housing shall be provided by the second municipality, hereinafter  
44 the receiving municipality, and the amount of contributions to be  
45 made by the first municipality, hereinafter the sending municipality.

46 b. A municipality which is a defendant in an exclusionary  
47 zoning suit and which has not obtained substantive certification

1 pursuant to P.L.1985, c.222 may request the court to be permitted to  
2 fulfill a portion of its fair share by entering into a regional  
3 contribution agreement. If the court believes the request to be  
4 reasonable, the court shall request the council to review the  
5 proposed agreement and to determine a match with a receiving  
6 municipality or municipalities pursuant to this section. The court  
7 may establish time limitations for the council's review, and shall  
8 retain jurisdiction over the matter during the period of council  
9 review. If the court determines that the agreement provides a  
10 realistic opportunity for the provision of low and moderate income  
11 housing within the housing region, it shall provide the sending  
12 municipality a credit against its fair share for housing to be  
13 provided through the agreement in the manner provided in this  
14 section. The agreement shall be entered into prior to the entry of a  
15 final judgment in the litigation. In cases in which a final judgment  
16 was entered prior to the date P.L.1985, c.222 takes effect and in  
17 which an appeal is pending, a municipality may request  
18 consideration of a regional contribution agreement; provided that it  
19 is entered into within 120 days after P.L.1985, c.222 takes effect.  
20 In a case in which a final judgment has been entered, the court shall  
21 consider whether or not the agreement constitutes an expeditious  
22 means of providing part of the fair share. Notwithstanding this  
23 subsection, no consideration shall be given to any regional  
24 contribution agreement of which the council did not complete its  
25 review and formally approve a recommendation to the court prior to  
26 '[ June 1, 2006 ] the effective date of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
27 (pending before the Legislature as this bill)' .

28 c. **[Regional]** Except as prohibited under P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
29 (pending before the Legislature as this bill), regional contribution  
30 agreements shall be approved by the council, after review by the  
31 county planning board or agency of the county in which the  
32 receiving municipality is located. The council shall determine  
33 whether or not the agreement provides a realistic opportunity for the  
34 provision of low and moderate income housing within convenient  
35 access to employment opportunities. The council shall refer the  
36 agreement to the county planning board or agency which shall  
37 review whether or not the transfer agreement is in accordance with  
38 sound, comprehensive regional planning. In its review, the county  
39 planning board or agency shall consider the master plan and zoning  
40 ordinance of the sending and receiving municipalities, its own  
41 county master plan, and the State development and redevelopment  
42 plan. In the event that there is no county planning board or agency  
43 in the county in which the receiving municipality is located, the  
44 council shall also determine whether or not the agreement is in  
45 accordance with sound, comprehensive regional planning. After it  
46 has been determined that the agreement provides a realistic  
47 opportunity for low and moderate income housing within  
48 convenient access to employment opportunities, and that the

1 agreement is consistent with sound, comprehensive regional  
2 planning, the council shall approve the regional contribution  
3 agreement by resolution. All determinations of a county planning  
4 board or agency shall be in writing and shall be made within such  
5 time limits as the council may prescribe, beyond which the council  
6 shall make those determinations and no fee shall be paid to the  
7 county planning board or agency pursuant to this subsection.

8 d. In approving a regional contribution agreement, the council  
9 shall set forth in its resolution a schedule of the contributions to be  
10 appropriated annually by the sending municipality. A copy of the  
11 adopted resolution shall be filed promptly with the Director of the  
12 Division of Local Government Services in the Department of  
13 Community Affairs, and the director shall thereafter not approve an  
14 annual budget of a sending municipality if it does not include  
15 appropriations necessary to meet the terms of the resolution.  
16 Amounts appropriated by a sending municipality for a regional  
17 contribution agreement pursuant to this section are exempt from the  
18 limitations or increases in final appropriations imposed under  
19 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

20 e. The council shall maintain current lists of municipalities  
21 which have stated an intent to enter into regional contribution  
22 agreements as receiving municipalities, and shall establish  
23 procedures for filing statements of intent with the council. No  
24 receiving municipality shall be required to accept a greater number  
25 of low and moderate income units through an agreement than it has  
26 expressed a willingness to accept in its statement, but the number  
27 stated shall not be less than a reasonable minimum number of units,  
28 not to exceed 100, as established by the council. The council shall  
29 require a project plan from a receiving municipality prior to the  
30 entering into of the agreement, and shall submit the project plan to  
31 the agency for its review as to the feasibility of the plan prior to the  
32 council's approval of the agreement. The agency may recommend  
33 and the council may approve as part of the project plan a provision  
34 that the time limitations for contractual guarantees or resale controls  
35 for low and moderate income units included in the project shall be  
36 less than 30 years, if it is determined that modification is necessary  
37 to assure the economic viability of the project.

38 f. The council shall establish guidelines for the duration and  
39 amount of contributions in regional contribution agreements. In  
40 doing so, the council shall give substantial consideration to the  
41 average of: (1) the median amount required to rehabilitate a low and  
42 moderate income unit up to code enforcement standards; (2) the  
43 average internal subsidization required for a developer to provide a  
44 low income housing unit in an inclusionary development; (3) the  
45 average internal subsidization required for a developer to provide a  
46 moderate income housing unit in an inclusionary development.  
47 Contributions may be prorated in municipal appropriations  
48 occurring over a period not to exceed ten years and may include an

1 amount agreed upon to compensate or partially compensate the  
2 receiving municipality for infrastructure or other costs generated to  
3 the receiving municipality by the development. Appropriations  
4 shall be made and paid directly to the receiving municipality or  
5 municipalities or to the agency or other governmental entity  
6 designated by the council, as the case may be.

7 g. The council shall require receiving municipalities to file  
8 annual reports with the agency setting forth the progress in  
9 implementing a project funded under a regional contribution  
10 agreement, and the agency shall provide the council with its  
11 evaluation of each report. The council shall take such actions as  
12 may be necessary to enforce a regional contribution agreement with  
13 respect to the timely implementation of the project by the receiving  
14 municipality.

15 <sup>2</sup>[No regional contribution agreement entered into by a  
16 municipality, or approved by the council or the court, subsequent  
17 to]<sup>2</sup> <sup>1</sup>[ June 1, 2006] <sup>2</sup>No consideration shall be given to any  
18 regional contribution agreement of which the council did not  
19 complete its review and approve prior to<sup>2</sup> the effective date of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill)<sup>1</sup>  
21 <sup>2</sup>[shall generate credit against a municipality's fair share  
22 obligation]<sup>2</sup> . On or after the effective date of P.L. , c. (C. )  
23 (pending before the Legislature as this bill), no regional  
24 contribution agreement shall be entered into by a municipality, or  
25 approved by the council or the court.

26 (cf: P.L.2001, c.435, s.4)

27  
28 <sup>1</sup>[18.] 17.<sup>1</sup> Section 20 of P.L.1985, c.222 (C.52:27D-320) is  
29 amended to read as follows:

30 20. **[The Neighborhood Preservation Program within the**  
31 **Department of Community Affairs' Division of Housing and**  
32 **Development, established pursuant to the Commissioner of**  
33 **Community Affairs' authority under section 8 of P.L.1975, c.248**  
34 **(C.52:27D-149), shall establish a separate Neighborhood**  
35 **Preservation Nonlapsing Revolving Fund for monies appropriated**  
36 **by section 33 of P.L.1985, c.222, or other monies as may be**  
37 **appropriated by the Legislature for the purposes of the fund.]**

38 There is established in the Department of Community Affairs a  
39 separate trust fund, to be used for the exclusive purposes as  
40 provided in this section, and which shall be known as the "New  
41 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
42 lapsing, revolving trust fund, and all monies deposited or received  
43 for purposes of the fund shall be accounted for separately, by source  
44 and amount, and remain in the fund until appropriated for such  
45 purposes. The fund shall be the repository of all State funds  
46 appropriated for affordable housing purposes, including the  
47 proceeds from the receipts of the additional fee collected pursuant

1 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49  
2 (C.46:15-7), proceeds from available receipts of the Statewide non-  
3 residential development fees collected pursuant to section **1** [36]  
4 35<sup>1</sup> of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill), monies lapsing or reverting from municipal development  
6 trust funds, or other monies as may be dedicated, earmarked, or  
7 appropriated by the Legislature for the purposes of the fund. All  
8 references in any law, order, rule, regulation, contract, loan,  
9 document, or otherwise, to the “Neighborhood Preservation  
10 Nonlapsing Revolving Fund” shall mean the “New Jersey  
11 Affordable Housing Trust Fund.” **2**The department shall be  
12 permitted to utilize annually up to 7.5 percent of the monies  
13 available in the fund for the payment of any necessary  
14 administrative costs related to the administration of the “Fair  
15 Housing Act,” P.L.1985, c.222. (C.52:27D-301 et al, the State  
16 Housing Commission, or any costs related to administration of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill).<sup>2</sup>

18 a. Except as permitted pursuant to subsection g. of this section,  
19 the commissioner shall award grants or loans from this fund for  
20 housing projects and programs in municipalities whose housing  
21 elements have received substantive certification from the council, in  
22 municipalities receiving State aid pursuant to P.L.1978, c.14  
23 (C.52:27D-178 et seq.), in municipalities subject to builder's  
24 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)  
25 or in receiving municipalities in cases where the council has  
26 approved a regional contribution agreement and a project plan  
27 developed by the receiving municipality.

28 **2**Of those monies deposited into the “New Jersey Affordable  
29 Housing Trust Fund” that are derived from municipal development  
30 fee trust funds, or from available collections of Statewide non-  
31 residential development fees, a priority for funding shall be  
32 established for projects in municipalities that have petitioned the  
33 council for substantive certification.<sup>2</sup>

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

37 b. The commissioner shall establish rules and regulations  
38 governing the qualifications of applicants, the application  
39 procedures, and the criteria for awarding grants and loans and the  
40 standards for establishing the amount, terms and conditions of each  
41 grant or loan.

42 c. **1**During the first 12 months from the effective date of  
43 P.L.1985, c.222 (C.52:27D-301 et al.) and for **2**For any  
44 **3** [additional] period which the council may approve, the  
45 commissioner may assist affordable housing programs which are  
46 not located in municipalities whose housing elements have been  
47 granted substantive certification or which are not in furtherance of a

1 regional contribution agreement; provided that the affordable  
2 housing program will meet all or part of a municipal low and  
3 moderate income housing obligation.

4 d. Amounts deposited in the **【Neighborhood Preservation】**  
5 “New Jersey Affordable Housing Trust Fund” shall be targeted  
6 to regions based on the region's percentage of the State's low and  
7 moderate income housing need as determined by the council.  
8 Amounts in the fund shall be applied for the following purposes in  
9 designated neighborhoods;

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

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

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

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

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

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

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

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 ensure that any unit of housing provided for  
46 low and moderate income households shall continue to be occupied  
47 by low and moderate income households for at least 20 years  
48 following the award of the loan or grant, except that the division

1 may approve a guarantee for a period of less than 20 years where  
2 necessary to ensure project feasibility.

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

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

31 h. The department and 'the State' Treasurer shall submit the  
32 '[fund] "New Jersey Affordable Housing Trust Fund" for an audit  
33 annually by the State Auditor or State Comptroller, at the discretion  
34 of the Treasurer. In addition, the department shall prepare an  
35 annual report for each fiscal year, and submit it by November 30th  
36 of each year to the Governor and the Legislature, and the Joint  
37 Committee on Housing Affordability, or its successor, and post the  
38 information to its web site, of all activity of the fund, including  
39 details of the grants and loans by number of units, number and  
40 income ranges of recipients of grants or loans, location of the  
41 housing renovated or constructed using monies from the fund, the  
42 number of units upon which affordability controls were placed, and  
43 the length of those controls. The report shall also list the activity of  
44 the funds set-aside for use for the State rental assistance program  
45 from the fund, pursuant to P.L.2004, c.140 '[C.52:27D-187.1 et  
46 al.]) (C.52:27D-287.1 et al.)' and subsection g. of this section.  
47 (cf: P.L.2004, c.140, s.4)

1       <sup>1</sup>[19.] 18.<sup>1</sup> (New section) a. Notwithstanding any rules of the  
2 council to the contrary, for developments consisting of newly-  
3 constructed residential units located, or to be located, within the  
4 jurisdiction of any regional planning entity required to adopt a  
5 master plan or comprehensive management plan pursuant to  
6 statutory law, including the New Jersey Meadowlands Commission  
7 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-  
8 6), the Pinelands Commission pursuant to section 7 of the  
9 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8) <sup>1</sup>, the  
10 Fort Monmouth Economic Revitalization Planning Authority  
11 pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its  
12 successor<sup>1</sup>, and the Highlands Water Protection and Planning  
13 Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11),  
14 other than joint planning boards formed pursuant to section 64 of  
15 P.L.1965, c.291 (C.40:55D-77), there shall be required to be  
16 reserved for occupancy by low or moderate <sup>2</sup>[or middle]<sup>2</sup> income  
17 households at least 20 percent of the residential units constructed <sup>2</sup>,  
18 to the extent this is economically feasible<sup>2</sup>.

19       b. A developer of a project consisting of newly constructed  
20 residential units being financed in whole or in part with State funds,  
21 including but not limited to, transit villages, units constructed on  
22 State-owned property, and urban transit hub centers as defined  
23 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208), shall be  
24 required to reserve at least 20 percent of the residential units  
25 constructed for occupancy by low <sup>1</sup>[,]<sup>1</sup> or moderate <sup>1</sup>[, or middle]<sup>1</sup>  
26 income households, as those terms are defined in section 4 of  
27 P.L.1985, c.222 (C.52:27D-304) with affordability controls as  
28 required under the rules of the council, unless the municipality in  
29 which the property is located has received substantive certification  
30 from the council and such a reservation is not required under the  
31 approved affordable housing plan, or the municipality has been  
32 given a judgment of repose or a judgment of compliance by the  
33 court, and such a reservation is not required under the approved  
34 affordable housing plan.

35       <sup>2</sup>c. (1) The Legislature recognizes that regional planning entities  
36 are appropriately positioned to take a broader role in the planning  
37 and provision of affordable housing based on regional planning  
38 considerations. In recognition of the value of sound regional  
39 planning, including the desire to foster economic growth, create a  
40 variety and choice of housing near public transportation, protect  
41 critical environmental resources, including farmland and open space  
42 preservation, and maximize the use of existing infrastructure, there  
43 is created a new program to foster regional planning entities.

44       (2) The regional planning entities identified in subsection a. of  
45 this section shall identify and coordinate regional affordable  
46 housing opportunities in cooperation with municipalities in areas  
47 with convenient access to infrastructure, employment opportunities,

1 and public transportation. Coordination of affordable housing  
2 opportunities may include methods to regionally provide housing in  
3 line with regional concerns, such as transit needs or opportunities,  
4 environmental concerns, or such other factors as the council may  
5 permit; provided, however, that such provision by such a regional  
6 entity may not result in more than a 50 percent change in the fair  
7 share obligation of any municipality; provided that this limitation  
8 shall not apply to affordable housing units directly attributable to  
9 development by the New Jersey Sports and Exposition Authority  
10 within the New Jersey Meadowlands District.

11 (3) In addition to the entities identified in subsection a. of this  
12 section, the Casino Reinvestment Development Authority, in  
13 conjunction with the Atlantic County Planning Board, shall identify  
14 and coordinate regional affordable housing opportunities directly  
15 attributable to Atlantic City casino development, which may be  
16 provided anywhere within Atlantic County, subject to the  
17 restrictions of subparagraph (4) of this subsection.

18 (4) The coordination of affordable housing opportunities by  
19 regional entities as identified in this section shall not include  
20 activities which would provide housing units to be located in those  
21 municipalities that are eligible to receive aid under the “Special  
22 Municipal Aid Act,” P.L.1987, c. 75 (C.52:27D-118.24 et seq.), or  
23 are coextensive with a school district which qualified for  
24 designation as a “special needs district” pursuant to the “Quality  
25 Education Act of 1990,” P.L.1990, c. 52 (C.18A:7D-1 et seq.), or at  
26 any time in the last ten years has been qualified to receive  
27 assistance under P.L.1978, c. 14 (C.52:27D-178 et seq.) and that  
28 fall within the jurisdiction of any of the regional entities specified  
29 in subsection a. of this section<sup>2</sup>.

30

31 <sup>1</sup>[20.] 19.<sup>1</sup> (New section) Notwithstanding any rules of the  
32 New Jersey Housing and Mortgage Finance Agency to the contrary,  
33 the allocation of low income tax credits shall be made by the  
34 agency to the full extent such credits are permitted to be allocated  
35 under federal law, <sup>1</sup>including allocations of 4 percent or 9 percent  
36 federal low income tax credits, and<sup>1</sup> including allocations allowable  
37 for partial credits. The affordable portion of any mixed income or  
38 mixed use development that is part of a fair share housing plan  
39 approved by the council, or a court-approved judgment of repose or  
40 compliance, including, but not limited to, a development that has  
41 received a density bonus, shall be permitted to receive allocations  
42 of low income tax credits, provided that the applicant can  
43 conclusively demonstrate that the market rate residential or  
44 commercial units are unable to internally subsidize the affordable  
45 units, and the affordable units are developed contemporaneously  
46 with the commercial or market rate residential units.

1        **'[21.] 20.'** (New section) The New Jersey Housing and  
2 Mortgage Finance Agency shall maintain on its website and publish  
3 annually a report concerning its activities during the year in  
4 promotion of affordable housing, including any activity pursuant to  
5 section 21 of P.L.1985, c.222 (C.52:27D-321). The report shall  
6 detail the number and amounts of grants, loans, the average loan  
7 amount made, the amounts of low income tax credits allocated by  
8 the agency, by location, and the number of proposed units, and any  
9 additional information which the agency deems informative to the  
10 public.

11  
12        **'[22.] 21.'** (New section) Sections **'[22 through 31] 21**  
13 **through 30'** of P.L. , c. (C. ) (pending before the Legislature  
14 as this bill) shall be known and may be cited as the "Strategic  
15 Housing Plan Act."

16  
17        **'[23.] 22.'** (New section) The Legislature finds that:

18        a. High housing prices, escalating property taxes, increasing  
19 municipal fees, rising energy costs, and the costs to implement  
20 various State rules and regulations have put housing out of the  
21 reach of many citizens;

22        b. The State of New Jersey suffers from a serious lack of  
23 housing affordable to its low and moderate **'[and middle]'** income  
24 households, reflected in the large number of households living in  
25 overcrowded and substandard housing conditions, or burdened by  
26 unreasonable and excessive housing costs;

27        c. As housing costs have increased in many parts of the State,  
28 and the process of urban revitalization has taken hold in many of  
29 the State's cities, these problems have become more severe and  
30 have come to affect a wide range of households at many income  
31 levels;

32        d. While new housing affordable to households at all income  
33 levels is urgently needed, the need to preserve existing housing  
34 owned or rented by low and moderate income **'[and middle**  
35 **income]'** households, much of which is at risk of loss, is also  
36 urgent;

37        e. The production of new housing and the preservation of the  
38 existing housing stock, including but not limited to subsidized  
39 affordable housing, has a significant positive impact on the health  
40 and well-being of the State as a whole, in particular its older cities  
41 and their neighborhoods, and should be encouraged as a matter of  
42 public policy by the State government;

43        f. Although the State has devoted substantial public resources  
44 for many years towards alleviating the housing needs of lower  
45 income households, the effective use of those resources and their  
46 impact on urban revitalization has been limited by inadequate

1 strategic planning in the allocation of public resources, as well as  
2 inadequate coordination with and leveraging of private resources;

3 g. The development of a strategic housing plan that will  
4 establish priorities to effectively targeted State resources should  
5 significantly enhance the impact of those resources in meeting the  
6 State's housing needs and fostering urban revitalization;

7 h. A strategic housing plan should provide for a means of  
8 coordinating the activities of the many State departments and  
9 agencies whose activities affect the ability of the State to meet its  
10 housing needs;

11 i. The active involvement of individuals outside State  
12 government with knowledge and experience in all phases of housing  
13 preservation, development, and management, as well as planning  
14 and urban revitalization, in the preparation and adoption of the plan,  
15 and the monitoring of State activities pursuant to the plan, should  
16 significantly enhance the value and effectiveness of the plan in  
17 increasing the State's ability to meet its housing needs and foster  
18 urban revitalization.

19

20 <sup>1</sup>[24.] 23.<sup>1</sup> (New section) As used in sections <sup>1</sup>[22 through 31]  
21 21 through 30<sup>1</sup> of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill):

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

25 "Commission" means the State Housing Commission established  
26 pursuant to section <sup>1</sup>[25] 24<sup>1</sup> of P.L. , c. (C. ) (pending  
27 before the Legislature as this bill).

28 "Council" means the New Jersey Council on Affordable  
29 Housing.

30 "Department" means the Department of Community Affairs.

31 "Middle income housing" means housing affordable according  
32 to federal Department of Housing and Urban Development or other  
33 recognized standards for home ownership and rental costs and  
34 occupied or reserved for occupancy by households with a gross  
35 household income equal to or more than 80% but less than 120% of  
36 the median gross household income for households of the same size  
37 within the housing region in which the housing is located.<sup>1</sup>

38 "Plan" means the Annual Strategic Housing Plan prepared  
39 pursuant to section <sup>1</sup>[28] 27<sup>1</sup> of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill).

41 "Report" means the Annual Housing Performance Report  
42 required to be prepared pursuant to section <sup>1</sup>[30] 29<sup>1</sup> of P.L. ,  
43 c. (C. ) (pending before the Legislature as this bill).

44 "Senior Deputy Commissioner for Housing" means the position  
45 established within the department which is charged with overseeing  
46 all housing programs.

1 “Working group” means the interdepartmental working group  
2 created pursuant to section ~~‘[27] 26’~~ of P.L. , c. (C. )  
3 (pending before the Legislature as this bill).  
4

5 ~~‘[25.] 24.’~~ (New section) a. The State Housing Commission is  
6 created and established in the Executive Branch of the State  
7 Government. For the purposes of complying with the provisions of  
8 Article V, Section IV, paragraph 1 of the New Jersey Constitution,  
9 the commission is allocated within the Department of Community  
10 Affairs, but notwithstanding this allocation, the commission shall be  
11 independent of any supervision or control by the department except  
12 as expressly authorized under P.L. , c. (C. ) (pending  
13 before the Legislature as this bill). The commission shall consist of  
14 ~~‘[13] 15’~~ public members and shall also include the Commissioner  
15 of Community Affairs, the Commissioner of Environmental  
16 Protection, the Commissioner of Human Services, the  
17 Commissioner of Transportation, the Commissioner of Education,  
18 the Chairman of the State Planning Commission, and the State  
19 Treasurer, who shall be nonvoting, ex-officio members of the  
20 commission. The non-public members may each designate a  
21 qualified employee to serve in their stead.

22 ~~‘[Eleven] Thirteen’~~ of the public members shall be appointed by  
23 the Governor with the advice and consent of the Senate as follows:  
24 four members shall be individuals qualified by expertise in housing  
25 preservation, development, and management and who do not hold  
26 public office or public employment, and one of the four shall have  
27 particular experience in addressing the needs of the homeless; two  
28 ~~‘of the four’~~ members shall be individuals qualified by expertise in  
29 urban revitalization and redevelopment and who do not hold public  
30 office ~~‘, one of whom shall be a nonprofit builder, and another~~  
31 ~~member of the four shall be a for-profit developer’~~; two members  
32 shall be elected local officials at the time of initial appointment, one  
33 of whom shall be an elected official in a municipality having a  
34 population greater than 50,000; two members shall be individuals  
35 who do not hold public office and are qualified by their position and  
36 experience to represent the interests of low and moderate income  
37 and middle income families and individuals; ~~‘[and]’~~ one member  
38 shall be an individual who does not hold public office and who is  
39 qualified by expertise in planning and land use ~~‘, one member who~~  
40 ~~does not hold public office shall be a licensed real estate broker or a~~  
41 ~~licensed real estate salesperson, and one member who shall be an~~  
42 ~~executive director of a public housing authority within the State’~~.  
43 Two additional public members who do not hold public office or  
44 public employment shall be appointed as follows: one member by  
45 the Speaker of the General Assembly and one member by the  
46 President of the Senate. The public members of the commission  
47 shall reflect the diversity of housing sector professionals.

1       b. The Governor shall nominate <sup>1</sup>[the 11] 13<sup>1</sup> public members  
2 of the commission, within 90 days following the effective date of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill),  
4 and shall designate a public member to preside over the commission  
5 until a chair and vice-chair are elected by the members of the  
6 commission. The Speaker of the General Assembly and the  
7 President of the Senate shall each appoint a member, respectively,  
8 within 90 days following the effective date of P.L. , c. (C. )  
9 (pending before the Legislature as this bill).

10       c. Each public member of the commission shall serve for a  
11 term of three years, except that of the initial members so appointed:  
12 three members appointed by the Governor shall serve for terms of  
13 one year; one member appointed by the President of the Senate, one  
14 member appointed by the Speaker of the General Assembly and five  
15 members appointed by the Governor shall serve for terms of two  
16 years; and the remaining appointees shall serve for terms of three  
17 years. Public members shall be eligible for reappointment. They  
18 shall serve until their successors are appointed and qualified, and  
19 the term of the successor of any incumbent shall be calculated from  
20 the expiration of the term of that incumbent. A vacancy occurring  
21 other than by expiration of term shall be filled in the same manner  
22 as the original appointment, but for the unexpired term only.

23       The members of the commission shall serve without  
24 compensation, but shall be entitled to reimbursement for all  
25 necessary expenses incurred in the performance of their duties.  
26 Each member of the commission may be removed from office by  
27 the Governor, for cause, upon notice and opportunity to be heard.

28       d. The commission shall elect annually a chair and vice-chair  
29 from among the public members of the commission, who shall serve  
30 for one year and until a successor is elected.

31       e. The executive secretary of the commission shall be the  
32 Senior Deputy Commissioner for Housing. In the event the  
33 commissioner designates the Senior Deputy Commissioner for  
34 Housing to serve in his or her stead as a member of the commission,  
35 the Senior Deputy Commissioner for Housing shall designate a  
36 qualified employee of the department to serve as executive  
37 secretary of the commission. <sup>2</sup>[Seven] Eight of the voting<sup>2</sup>  
38 members of the commission shall constitute a quorum and a vote of  
39 the majority of the members present shall be necessary for any  
40 action taken by the commission.

41       f. The duties of the commission shall be as follows:

42       (1) To provide guidance and direction with respect to the  
43 policies and strategies to be pursued by State agencies with respect  
44 to housing which are incorporated into the plan.

45       (2) To prepare and adopt the Annual Strategic Housing Plan as  
46 set forth in section <sup>1</sup>[29] 28<sup>1</sup> of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill).

1 (3) To hold such public hearings and other activities as may be  
2 desirable to ensure adequate public input into the preparation of the  
3 plan and increase public awareness of the strategies and activities  
4 contained in the plan.

5 (4) To gather and disseminate such information on housing  
6 needs and strategies as may be useful for the work of the  
7 commission and informative to the public.

8  
9 '[26.] 25.' (New section) The department shall provide such  
10 staff services as may be needed for the commission to carry out its  
11 responsibilities, including assembly of necessary information and  
12 statistics, preparation of draft reports and analyses, and preparation  
13 of the draft plan for review by the members of the commission,  
14 acting under the supervision of the Senior Deputy Commissioner  
15 for Housing.

16  
17 '[27.] 26.' (New section) a. An interdepartmental working  
18 group is established for the purpose of supporting the activities of  
19 the commission and its preparation of the draft plan.

20 b. The membership of the working group shall consist of the  
21 commissioners or executive directors of the following departments  
22 or agencies of State government: the Department of Community  
23 Affairs, the Council on Affordable Housing, the New Jersey  
24 Housing and Mortgage Finance Agency, the Department of Human  
25 Services, the Department of Children and Families, the Department  
26 of Health and Senior Services, the Public Advocate, the Department  
27 of Education, the Department of Environmental Protection, the  
28 Department of Transportation, the Office of Smart Growth, the  
29 Department of the Treasury, the Highlands Council, the Pinelands  
30 Commission, and the New Jersey Meadowlands Commission.

31 c. The Commissioner of Community Affairs may appoint the  
32 Senior Deputy Commissioner for Housing as his or her  
33 representative to serve on the working group.

34 d. Each other commissioner or executive director may appoint  
35 a representative to serve on the working group, who shall be a  
36 senior employee of the department or agency with substantial  
37 background, experience, or training relevant to the mission of the  
38 working group.

39 e. The working group shall be chaired by the Commissioner of  
40 Community Affairs or by the Senior Deputy Commissioner for  
41 Housing as the commissioner's designee, if so appointed.

42 f. Meetings of the working group shall be called by the chair as  
43 needed during the course of preparation of the plan or the annual  
44 performance report.

45 g. Each department or agency constituting the working group  
46 shall make available such personnel and information as may be  
47 necessary to enable the working group to perform its  
48 responsibilities.

1       '【28.】 27.' (New section) a. It shall be the duty of the  
2 commission annually to prepare and adopt an Annual Strategic  
3 Housing Plan as set forth in this section.

4       The objectives of the plan shall be as follows:

5       (1) To ensure that quality housing for people of all income  
6 levels is made available throughout the State of New Jersey.

7       (2) To overcome the shortage of housing affordable to low,  
8 moderate, and middle income households, in order to ensure the  
9 viability of New Jersey's communities and maintain the State's  
10 economic strength.

11       (3) To meet the need for safe and accessible affordable housing  
12 and supportive services for people with disabilities.

13       (4) To foster a full range of quality housing choices for people  
14 of diverse incomes through mixed income development in urban  
15 areas and in locations appropriate for growth, including transit hubs  
16 and corridors, and areas of job concentration.

17       (5) To address the needs of communities that have been  
18 historically underserved and segregated due to barriers and trends in  
19 the housing market, and frame strategies to address the needs of  
20 those communities.

21       (6) To facilitate the preservation of existing affordable rental  
22 housing, including both subsidized and private market rental  
23 housing.

24       (7) To further the preservation of low and moderate income and  
25 middle income homeownership, including strategies to protect  
26 lower income homeowners from the loss of their homes through  
27 foreclosure.

28       b. In addressing these objectives, the plan shall explicitly take  
29 into consideration the needs of the following distinct populations:

30       (1) Households earning below 50% of the area median income,  
31 with particular emphasis on households earning less than 30% of  
32 the area median income;

33       (2) Low income senior citizens of 62 years of age or older;

34       (3) Low income persons with disabilities, including but not  
35 limited to physical disability, developmental disability, mental  
36 illness, co-occurring mental illness and substance abuse disorder,  
37 and HIV/AIDS;

38       (4) Homeless persons and families, and persons deemed at high  
39 risk of homelessness;

40       (5) Low and moderate income and middle income households  
41 unable to find housing near work or transportation;

42       (6) Low and moderate income and middle income persons and  
43 families in existing affordable housing that is at risk of becoming  
44 unaffordable or being lost for any reason;

45       (7) Any other part of the population that the commission finds  
46 to have significant housing needs, either Statewide or in particular  
47 areas of the State.

1 c. The plan shall include, but not be limited to, the following:

2 (1) The identification of all funds which any agency or  
3 department of the State controls and uses for housing construction,  
4 rehabilitation, preservation, operating or rental subsidies and  
5 supportive services, including bond proceeds, the allocation of  
6 federal Low Income Housing Tax Credits, and the use of  
7 administrative funds by the agency or the department;

8 (2) Goals for the number and type of housing units to be  
9 constructed, rehabilitated, or preserved each year for the  
10 underserved populations identified in subsection b. of this section,  
11 taking into account realistic assessments of financial resources and  
12 delivery capacity survey <sup>2</sup>, and shall include an assessment aimed at  
13 identifying and estimating the number of substandard housing units  
14 within the State<sup>2</sup>;

15 (3) Specific recommendations for the manner in which all funds  
16 identified in paragraph (1) of this subsection should be prioritized  
17 and used, either through new construction, rehabilitation,  
18 preservation, rental subsidies, or other activities, to address the  
19 needs of the underserved populations set forth in subsection b. of  
20 this section;

21 (4) Specific actions needed to ensure the integrated use of State  
22 government resources that can be used to create or preserve  
23 affordable housing, provide supportive services, facilitate the use of  
24 housing for urban revitalization, and prevent homelessness,  
25 including an identification of the specific agencies and programs  
26 responsible for each action;

27 (5) An assessment of the State's performance during the  
28 preceding year;

29 (6) Recommendations for changes to any program or use of  
30 funds which the State controls available for land use planning,  
31 housing construction, rehabilitation, preservation, operating or  
32 rental subsidies and supportive services, including both procedural  
33 and substantive changes, and the specific agencies responsible for  
34 each change;

35 (7) Recommendations for State and local actions to promote the  
36 creation and preservation of subsidized affordable and market-rate  
37 housing by private sector, non-profit, and government agencies,  
38 with particular reference to changes to programs, regulations, and  
39 other activities that impede such activities;

40 (8) Recommendations for State and local actions for programs  
41 and strategies through which the provision of affordable and mixed-  
42 income housing can better further citywide and neighborhood  
43 revitalization in the State's urban areas; and

44 (9) Identification of strategies that local government can take to  
45 create or preserve affordable housing, including specific  
46 recommendations for the use of monies collected through developer  
47 fees in local housing development trust funds.

1 d. The plan shall provide for both annual and long-term targets  
2 and priorities.

3  
4 <sup>1</sup>[29.] 28. (New section) a. The commission shall complete a  
5 draft plan on or before October 1 of each year. The commission  
6 shall adopt the plan by a vote of a majority of its members and  
7 transmit the plan to the Governor and the Joint Committee on  
8 Housing Affordability, or its successor, on or before the next  
9 January 1. The plan shall cover the fiscal year from July 1 to June  
10 30th, beginning with July 1 of the preceding year, except that the  
11 first annual plan shall be transmitted on the first January 1 that falls  
12 after the annual anniversary of the effective date of P.L. ,  
13 c. (C. ) (pending before the Legislature as this bill).

14 b. With respect to the plans for the second through fourth years  
15 following the initial plan, the commission may adopt and submit  
16 either a plan de novo or an update to, or revision of, the initial  
17 year's plan, based on its judgment as to the extent of housing needs,  
18 funding resources, or other conditions that have or have not  
19 changed since the initial plan was prepared. In the fifth year  
20 following the initial plan, and every five years thereafter, the  
21 commission shall adopt and submit a complete plan de novo.

22 c. The plan and all supporting documentation thereof shall be  
23 made available both in printed form by the department and in  
24 downloadable form on the department's web site.

25  
26 <sup>1</sup>[30.] 29. (New section) a. On or before January 1 of each  
27 year, beginning with the first January 1 that falls after the annual  
28 anniversary of the effective date of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill), the department, in consultation  
30 with the commission and the working group, shall prepare and  
31 submit to the Governor and the Joint Committee on Housing  
32 Affordability, or its successor, an Annual Housing Performance  
33 Report. Within 30 days following receipt of the Annual Housing  
34 Performance Report, a hearing shall be held by the Joint Committee  
35 on Housing Affordability, or its successor, to provide an  
36 opportunity for public comment and discussion.

37 b. The report shall include, but shall not be limited to, the  
38 following information:

39 (1) All housing units constructed, rehabilitated, or preserved in  
40 which funds controlled by any agency of the State were utilized,  
41 including the number of units by:

42 (a) Location;

43 (b) Affordability and income ranges of occupants;

44 (c) Target population; i.e., small family, large family, senior  
45 citizens, people with disabilities;

46 (d) Type of housing, including ownership, rental, and other  
47 forms of tenure; physical type such as single family or multifamily;

1 and whether the unit was newly constructed, rehabilitated, or  
2 preserved; and

3 (e) The amount and source of all State-controlled funds used.

4 (2) All bond issuance activity by the agency, including interest  
5 rates and the use of bond proceeds.

6 (3) All other activities, including financial support, technical  
7 assistance, or other support conducted by the State to further  
8 affordable housing.

9 (4) Municipal performance pursuant to the “Fair Housing Act,”  
10 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of  
11 units listed for the distinct populations as enumerated in subsection  
12 b. of section <sup>1</sup>[28] 27<sup>1</sup> of P.L. , c. (C. ) (pending before the  
13 Legislature as this bill), and the monies collected and the use of all  
14 developer fee proceeds deposited into municipal housing trust  
15 funds.

16 (5) For every report issued subsequent to the end of the first  
17 year for which a plan has been prepared pursuant to sections <sup>1</sup>[28  
18 and 29] 27 and 28<sup>1</sup> of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill):

20 (a) A comparison between the goals, strategies, and priorities  
21 set forth in the plan and the outcomes of programs and strategies  
22 carried out by the State during the year, and a statement of the  
23 reasons for any differences between the plan and the State’s  
24 programs and strategies; and

25 (b) A description of the manner in which the State has addressed  
26 the recommendations, if any, for procedural or substantive changes  
27 to any State program or activity set forth in the plan.

28 (6) Statistical appendices providing information on individual  
29 projects and funding allocations.

30 c. The report, appendices, and all supporting documentation  
31 thereof shall be made available both in printed form from the  
32 department and in downloadable form on the department’s web site.  
33

34 <sup>1</sup>[31.] 30.<sup>1</sup> (New section) a. The position of Senior Deputy  
35 Commissioner for Housing is established within the department,  
36 which position shall be filled by an individual with recognized and  
37 extensive experience in housing policy, planning, and development  
38 with particular emphasis on the planning and development of  
39 housing affordable to low, moderate, and middle income  
40 households.

41 b. The Senior Deputy Commissioner for Housing shall exercise  
42 oversight over the housing programs of the department, including,  
43 but not limited to, programs of the agency and the council.

44 c. The commissioner may appoint the Senior Deputy  
45 Commissioner for Housing as his or her designee to chair the  
46 agency, the commission, or the council, in which capacity or  
47 capacities the Senior Deputy Commissioner for Housing will have  
48 all of the powers vested in those positions by law.

1       '【32.】 31.'<sup>1</sup> (New section) a. In proposing a rule for adoption,  
2 the agency involved shall issue a housing affordability impact  
3 analysis regarding the rule, which shall be included in the notice of  
4 a proposed rule as required by subsection (a) of section 4 of  
5 P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact  
6 analysis shall contain:

7       (1) A description of the types and an estimate of the number of  
8 housing units to which the proposed rule will apply; and

9       (2) A description of the estimated increase or decrease in the  
10 average cost of housing which will be affected by the regulation.

11       This subsection shall not apply to any proposed rule which the  
12 agency finds would impose an insignificant impact, either because  
13 the scope of the regulation is minimal, or there is an extreme  
14 unlikelihood that the regulation would evoke a change in the  
15 average costs associated with housing. The agency's finding and an  
16 indication of the basis for its finding shall be included in the notice  
17 of a proposed rule as required by subsection (a) of section 4 of P.L.  
18 1968, c.410 (C.52:14B-4).

19       b. In proposing a rule for adoption, the agency involved shall  
20 issue a smart growth development impact analysis regarding the  
21 rule, which shall be included in the notice of a proposed rule as  
22 required by subsection (a) of section 4 of P.L.1968, c.410  
23 (C.52:14B-4). Each smart growth development impact analysis  
24 shall contain:

25       (1) A description of the types and an estimate of the number of  
26 housing units to which the proposed rule will apply;

27       (2) A description of the estimated increase or decrease in the  
28 availability of affordable housing which will be affected by the  
29 regulation; and

30       (3) A description as to whether the proposed rule will affect in  
31 any manner new construction within Planning areas 1 or 2, or  
32 within designated centers, under the State Development and  
33 Redevelopment Plan.

34       This subsection shall not apply to any proposed rule which the  
35 agency finds would impose an insignificant impact, either because  
36 the scope of the regulation is minimal, or there is an extreme  
37 unlikelihood that the regulation would evoke a change in the  
38 housing production within Planning areas 1 or 2, or within  
39 designated centers, under the State Development and  
40 Redevelopment Plan. The agency's finding and an indication of the  
41 basis for its finding shall be included in the notice of a proposed  
42 rule as required by subsection (a) of section 4 of P.L.1968, c.410  
43 (C.52:14B-4).

44       For the purposes of complying with this subsection, and in order  
45 to avoid duplicative action, an agency may consider a series of  
46 closely related rules as one rule.

47       c. For the purposes of this section, "types" means housing  
48 groups distinguished by the following categories: housing reserved

1 for occupancy by very low, low and moderate and middle income  
2 households, respectively; single family, two-family, and multi-  
3 family housing; rental housing and for-sale housing.

4

5 <sup>1</sup>[33.] 32.<sup>1</sup> (New section) Sections <sup>1</sup>[33 through 39] 32  
6 through 38<sup>1</sup> of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill) shall be known and may be cited as the  
8 “Statewide Non-residential Development Fee Act.”

9

10 <sup>1</sup>[34.] 33.<sup>1</sup> (New section) The Legislature finds and declares:

11 a. The collection of development fees from builders of  
12 residential and non-residential properties has been authorized by the  
13 court through the powers delegated to the Council on Affordable  
14 Housing established pursuant to the “Fair Housing Act,” P.L.1985,  
15 c.222 (C.52:27D-301 et al.).

16 b. New Jersey’s land resources are becoming more scarce,  
17 while its redevelopment needs are increasing. In order to balance  
18 the needs of developing and redeveloping communities, a  
19 reasonable method of providing for the housing needs of low and  
20 moderate income and middle income households, without  
21 mandating the inclusion of housing in every non-residential project,  
22 must be established.

23 c. A Statewide non-residential development fee program which  
24 permits municipalities under the council's jurisdiction to retain  
25 these fees for use in the municipality will provide a fair and  
26 balanced funding method to address the State’s affordable housing  
27 needs, while providing an incentive to all municipalities to seek  
28 substantive certification from the <sup>2</sup>[council's] council<sup>2</sup>.

29 <sup>2</sup>d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
30 organizations are directed to invest in the Casino Reinvestment  
31 Development Authority to ensure that the development of housing  
32 for families of low and moderate income shall be provided. The  
33 Casino Reinvestment Development Authority, in consultation with  
34 the council, shall work to effectuate the purpose and intent of P.L.  
35 1985, c. 222 (C. 52:27D-301 et al.).<sup>2</sup>

36

37 <sup>1</sup>[35.] 34.<sup>1</sup> (New section) As used in <sup>1</sup>[(section 33 through 39]  
38 sections 32 through 38<sup>1</sup> of P.L. , c. (C. ) (pending before the  
39 legislature as this bill).

40 “Construction” means new construction and additions, but does  
41 not include alterations, reconstruction, renovations, and repairs as  
42 those terms are defined under the State Uniform Construction Code  
43 promulgated pursuant to the "State Uniform Construction Code  
44 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

45 “Commissioner” means the Commissioner of Community  
46 Affairs.

1 “Council” means the Council on Affordable Housing, established  
2 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

3 “Developer” means the legal or beneficial owner or owners of a  
4 lot or of any land proposed to be included in a proposed  
5 development, including the holder of an option or contract to  
6 purchase, or other person having an enforceable proprietary interest  
7 in such land.

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

13 “Mixed <sup>1</sup>[Use Development”] use development”<sup>1</sup> means any  
14 development which includes both a non-residential development  
15 component and a residential development component, and shall  
16 include developments for which (1) there is a common developer  
17 for both the residential development component and the non-  
18 residential development component, provided that for purposes of  
19 this definition, multiple persons and entities may be considered a  
20 common developer if there is a contractual relationship among them  
21 obligating each entity to develop at least a portion of the residential  
22 or non-residential development, or both, or otherwise to contribute  
23 resources to the development; and (2) the residential and non-  
24 residential developments are located on the same lot or adjoining  
25 lots, including but not limited to lots separated by a street, a river,  
26 or another geographical feature.

27 "Non-residential development" means: (1) any building or  
28 structure, or portion thereof, including but not limited to any  
29 appurtenant improvements, which is designated to a use group other  
30 than a residential use group according to the State Uniform  
31 Construction Code promulgated to effectuate the "State Uniform  
32 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
33 including any subsequent amendments or revisions thereto; <sup>2</sup>[and]<sup>2</sup>  
34 (2) hotels, motels, vacation timeshares, and child-care facilities <sup>2</sup>,  
35 and (3) the entirety of all continuing care facilities within a  
36 continuing care retirement community which is subject to the  
37 "Continuing Care Retirement Community Regulation and Financial  
38 Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.)<sup>2</sup>.

39 “Non-residential development fee” means the fee authorized to  
40 be imposed pursuant to sections <sup>1</sup>[33 through 39] 32 through 38<sup>1</sup> of  
41 P.L. , c. (C. ) (pending before the Legislature as this bill).

42 “Relating to the provision of housing” shall be liberally  
43 construed to include the construction, maintenance, or operations of  
44 housing, including but not limited to the provision of services to  
45 such housing and the funding of any of the above.

46 “Spending plan” means a method of allocating funds collected  
47 and to be collected pursuant to an approved municipal development

1 fee ordinance, or pursuant to P.L. , c. (C ) (pending  
2 before the Legislature as this bill) for the purpose of meeting the  
3 housing needs of low '[ ,]' and moderate '[ , and middle]'<sup>1</sup> income  
4 individuals.

5 "Treasurer" means the Treasurer of the State of New Jersey.  
6

7 '[36.] 35.'<sup>1</sup> (New section) a. Beginning on the effective date of  
8 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
9 fee is imposed on all '[applications for development for]  
10 construction resulting in' non-residential development, '[and for  
11 construction permits affecting non-residential property,]'<sup>1</sup> as  
12 follows:

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

16 (2) A fee equal to two and one-half percent of the increase in  
17 equalized assessed value, of the '[reconstruction of or]'<sup>1</sup> additions  
18 to existing structures to be used for non-residential purposes.

19 b. All non-residential construction of buildings or structures on  
20 property used by churches, synagogues, mosques, and other houses  
21 of worship, and property used for educational purposes, which is  
22 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
23 imposition of a non-residential development fee pursuant to this  
24 section, provided that the property continues to maintain its tax  
25 exempt status under that statute for a period of at least three years  
26 from the date of issuance of the certificate of occupancy. In  
27 addition, the following shall be exempt from the imposition of a  
28 non-residential development fee: parking lots and parking  
29 structures, regardless of whether the parking lot or parking structure  
30 is constructed in conjunction with a non-residential development,  
31 such as an office building, or whether the parking lot is developed  
32 as an independent non-residential development; and any non-  
33 residential development which is an amenity to be made available to  
34 the public, including, but not limited to, recreational facilities,  
35 community centers, and senior centers, which are developed in  
36 conjunction with or funded by a non-residential developer. <sup>2</sup>In  
37 addition, non-residential construction resulting from a relocation of  
38 or an on-site improvement to a nonprofit hospital or a nursing home  
39 facility shall be exempt from the fees authorized to be imposed  
40 under this section.<sup>2</sup>

41 A developer of a non-residential development exempted from the  
42 non-residential development fee pursuant to this section shall be  
43 subject to it at such time the basis for the exemption set forth in this  
44 subsection no longer applies, and shall make the payment of the  
45 non-residential development fee, in that event, within three years  
46 after that event or after the issuance of the final certificate of  
47 occupancy of the non-residential development whichever is later..

1 For purposes of this subsection, “recreational facilities and  
2 community center” means any indoor or outdoor buildings, spaces,  
3 structures, or improvements intended for active or passive  
4 recreation, including but not limited to ball fields, meeting halls,  
5 and classrooms, accommodating either organized or informal  
6 activity; and “senior center” means any recreational facility or  
7 community center with activities and services oriented towards  
8 serving senior citizens.

9 If a property which was exempted from the collection of a non-  
10 residential development fee thereafter ceases to be exempt from  
11 property taxation, the owner of the property shall remit the fees  
12 required pursuant to this section within 45 days of the termination  
13 of the property tax exemption. Unpaid non-residential development  
14 fees under these circumstances may be enforceable by the  
15 municipality as a lien against the real property of the owner.

16 c. (1) <sup>1</sup>~~【Developers】~~ Unless authorized to pay directly to the  
17 municipality in which the non-residential construction is occurring  
18 in accordance with paragraph (2) of this subsection, developers<sup>1</sup>  
19 shall pay non-residential development fees imposed pursuant to  
20 P.L. , c. (C. ) (pending before the Legislature as this bill)  
21 to the <sup>1</sup>~~【Commissioner of Community Affairs to be held for deposit~~  
22 into the New Jersey Affordable Housing Trust Fund established  
23 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320),  
24 Treasurer, in accordance with subsection h. of this section<sup>1</sup> in a  
25 manner and on such forms as required by the <sup>1</sup>~~【commissioner】~~  
26 Treasurer<sup>1</sup>, provided that a certified proof concerning the payment  
27 shall be furnished by the <sup>1</sup>~~【commissioner】~~ Treasurer<sup>1</sup>, to the  
28 municipality.

29 (2) <sup>1</sup>~~【The commissioner shall forward to a municipality, within~~  
30 15 days of the collection thereof, the non-residential development  
31 fees collected pursuant to P.L. , c. (C. ) (pending before the  
32 Legislature as this bill) if that】 The council shall maintain on its  
33 website a list of each<sup>1</sup> municipality <sup>1</sup>that is authorized to use the  
34 development fees collected pursuant to this section and<sup>1</sup> that has a  
35 confirmed status of compliance with the “Fair Housing Act,”  
36 P.L.1985, c.222 (C.52:27D-301 et al.), which compliance shall  
37 include a spending plan authorized by the council for all <sup>1</sup>【other】<sup>1</sup>  
38 development fees collected.

39 d. The payment of non-residential development fees required  
40 pursuant to sections <sup>1</sup>~~【33 through 39】~~ 32 through 38<sup>1</sup> of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill) shall be  
42 made prior to the issuance of a certificate of occupancy <sup>1</sup>for such  
43 development. A final certificate of occupancy shall not be issued  
44 for any non-residential development until such time as the fee  
45 imposed pursuant to this section has been paid by the developer. A  
46 non-residential developer may deposit with the appropriate entity

1 the development fees as calculated by the municipality under  
2 protest, and the local code enforcement official shall thereafter  
3 issue the certificate of occupancy provided that the construction is  
4 otherwise eligible for a certificate of occupancy.<sup>1</sup>

5 e. The construction official responsible for the issuance of a  
6 building permit shall notify the local tax assessor of the issuance of  
7 the first building permit for a development which may be subject to  
8 a non-residential development fee. Within 90 days of receipt of that  
9 notice, the municipal tax assessor, based on the plans filed, shall  
10 provide an estimate of the equalized assessed value of the non-  
11 residential development. The construction official responsible for  
12 the issuance of a final certificate of occupancy shall notify the local  
13 assessor of any and all requests for the scheduling of a final  
14 inspection on property which may be subject to a non-residential  
15 development fee. Within 10 business days of a request for the  
16 scheduling of a final inspection, the municipal assessor shall  
17 confirm or modify the previously estimated equalized assessed  
18 value of the improvements of the non-residential development in  
19 accordance with the regulations adopted by the Treasurer pursuant  
20 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
21 development fee pursuant to sections <sup>1</sup>[33 through 39] 32 through  
22 38<sup>1</sup> of P.L. , c. (C. ) (pending before the Legislature as  
23 this bill); and thereafter notify the developer of the amount of the  
24 non-residential development fee. Should the municipality fail to  
25 determine or notify the developer of the amount of the non-  
26 residential development fee within 10 business days of the request  
27 for final inspection, the developer may estimate the amount due and  
28 pay that estimated amount consistent with the dispute process set  
29 forth in subsection b. of section <sup>1</sup>[38] 37<sup>1</sup> of P.L. , c. (C. )  
30 (pending before the Legislature as this bill). Upon tender of the  
31 estimated non-residential development fee, provided the developer  
32 is in full compliance with all other applicable laws, the municipality  
33 shall issue a final certificate of occupancy for the subject property.  
34 Failure of the municipality to comply with the timeframes or  
35 procedures set forth in this subsection may subject it to penalties to  
36 be imposed by the commissioner; any penalties so imposed shall be  
37 deposited into the <sup>1</sup>"New Jersey Affordable Housing Trust Fund<sup>1</sup>"<sup>1</sup>  
38 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-  
39 320).

40 <sup>1</sup>A developer of a mixed use development shall be required to  
41 pay the Statewide non-residential development fee relating to the  
42 non-residential development component of a mixed use  
43 development subject to the provisions of P.L. , c. (C. )  
44 (now before the Legislature as this bill).<sup>1</sup>

45 <sup>2</sup>Non-residential construction which is connected with the  
46 relocation of the facilities of a for-profit hospital shall be subject to  
47 the fee authorized to be imposed under this section to the extent of

1 the increase in equalized assessed valuation in accordance with  
2 regulations to be promulgated by the Director of the Division of  
3 Taxation, Department of the Treasury.<sup>2</sup>

4 f. Any municipality that is not in compliance with the  
5 requirements established pursuant to sections <sup>1</sup>~~33 through 39~~ 32  
6 through 38<sup>1</sup> of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill), or regulations of the council adopted  
8 thereto, may be subject to forfeiture of any or all funds remaining  
9 within its municipal development trust fund. Any funds so forfeited  
10 shall be deposited into the <sup>1</sup>~~"~~ New Jersey Affordable Housing Trust  
11 Fund<sup>1</sup>, <sup>1</sup>~~"~~ established pursuant to section 20 of P.L.1985, c.222  
12 (C.52:27D-320).

13 g. <sup>1</sup>~~Notwithstanding any provision of P.L. , c. (C. )~~  
14 (pending before the Legislature as this bill), or rules of the council  
15 to the contrary, a municipality that qualifies for State aid pursuant  
16 to P.L.1978, c.14 (C.52:27D-178 et seq.) may impose, collect, or  
17 spend development and non-residential development fees by filing a  
18 development fee ordinance and spending plan, and requesting  
19 approval by the council. Such municipalities shall be permitted to  
20 develop separate spending plans, which plans may provide for  
21 housing rehabilitation, new construction of housing or schools,  
22 repair or enhancement of infrastructure, grants to redevelopment  
23 projects, job training, construction of day care centers, or any  
24 activity which the governing body of the municipality believes will  
25 provide economic stability and sustainable neighborhoods.] The  
26 Treasurer shall credit to the "Urban Housing Assistance Fund,"  
27 established pursuant to section 13 of P.L. , c. (C. ) (pending  
28 before the Legislature as this bill) annually from the receipts of the  
29 fees authorized to be imposed pursuant to this section an amount  
30 equal to \$20 million; all receipts in excess of this amount, except  
31 for amounts necessary for administrative purposes which shall not  
32 exceed five percent annually, shall be deposited into the "New  
33 Jersey Affordable Housing Trust Fund," established pursuant to  
34 section 20 of P.L.1985, c.222 (C.52:27D-320), to be used for the  
35 purposes of that fund.<sup>1</sup>

36 <sup>2</sup>The Treasurer shall adopt such regulations as necessary to  
37 effectuate sections 32 through 38 of P.L. , c. (C. ) (pending  
38 before the Legislature as this bill), in accordance with the  
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
40 seq.).<sup>2</sup>

41  
42 <sup>1</sup>~~37.~~ 36.<sup>1</sup> (New section) a. The commissioner, in consultation  
43 with the council, shall promulgate, in accordance with the  
44 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
45 (C.52:14B-1 et seq.), such regulations as are necessary for the  
46 prompt and effective implementation of the provisions and purposes  
47 of P.L. , c. (C. ) (pending before the Legislature as this bill)

1 <sup>2</sup>, including, but not limited to, provisions for the payment of any  
 2 necessary administrative costs related to the assessment of  
 3 properties and collection of any development fees by a  
 4 municipality<sup>2</sup>.

5 b. Notwithstanding the authority granted to the commissioner  
 6 herein, the council shall adopt and promulgate, in accordance with  
 7 the provisions of the "Administrative Procedure Act," P.L.1968,  
 8 c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the  
 9 effectuation of P.L. , c. (C. ) (pending before the  
 10 Legislature as this bill), including but not limited to, regulations  
 11 necessary for the establishment, implementation, review,  
 12 monitoring, and enforcement of a municipal affordable housing  
 13 trust fund and spending plan.

14  
 15 <sup>1</sup>[38.] 37.<sup>1</sup> (New section) a. The provisions of sections <sup>1</sup>[33  
 16 through 39] 32 through 38<sup>1</sup> of P.L. , c. (C. ) (pending  
 17 before the Legislature as this bill) shall not apply to:

18 (1) <sup>2</sup>[A development application which has]<sup>2</sup> <sup>1</sup>[been deemed  
 19 complete pursuant to section 5 of P.L.1984, c.20 (C.40:55D-10.3)]  
 20 <sup>2</sup>[received preliminary or final approval pursuant to section 37 or  
 21 38 of P.L.1975, c.22 (C.40:55D-49 or C.40:55D-50)<sup>1</sup> prior to the  
 22 effective date of P.L. , c. (C. ) (pending before the  
 23 Legislature as this bill); or

24 (2) Non-residential] Non-residential<sup>2</sup> property for which a  
 25 <sup>2</sup>[construction permit] certificate of occupancy<sup>2</sup> has been issued  
 26 prior to the effective date of P.L. , c. (C. ) (pending before  
 27 the Legislature as this bill) <sup>2</sup>; or

28 (2) A non-residential planned development which has received  
 29 approval of a general development plan pursuant to section 5 of  
 30 P.L.1987, c.129 (C.40:55D-45.3) or nonresidential development for  
 31 which the developer has entered into a developer's agreement  
 32 pursuant to a development approval granted pursuant to P.L.1975,  
 33 c.291 (C.40:55D-1 et seq.) or the redeveloper has entered into a  
 34 redevelopment agreement pursuant to P.L 1992, c.79 (C.40A:12A-1  
 35 et seq.) prior to the effective date of P.L. , c. (C. ) (pending  
 36 before the Legislature as this bill), provided however, that the  
 37 general development plan, developer's agreement, redevelopment  
 38 agreement or any development agreement pursuant to the  
 39 "Municipal Land Use Law," P.L.1975, c.291 (C. 40:55D-1 et seq.)  
 40 provide that the developer or redeveloper pay a fee for affordable  
 41 housing of at least one percent of the equalized assessed value of  
 42 the improvements which are the subject of the development plan,  
 43 developer's agreement or redevelopment agreement<sup>2</sup>.

44 b. A developer may challenge non-residential development fees  
 45 imposed pursuant to P.L. , c. (C. ) (pending before the  
 46 Legislature as this bill) by filing a challenge with the  
 47 <sup>1</sup>[Commissioner of Community Affairs] Director of the Division of

1 Taxation<sup>1</sup>. Pending a review and determination by the  
2 **'[commissioner] director'**, which shall be made within 45 days of  
3 receipt of the challenge **'[,]'**<sup>1</sup> collected fees shall be placed in an  
4 interest bearing escrow account by the municipality or by the State,  
5 as the case may be. Appeals from a determination of the  
6 **'[commissioner] director'** may be made to the **'[Office of**  
7 **Administrative Law, within 45 days of the commissioner's**  
8 **determination]** to the tax court in accordance with the provisions of  
9 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within  
10 90 days after the date of such determination<sup>1</sup>. Interest earned on  
11 amounts escrowed shall be credited to the prevailing party.

12 c. Whenever non-residential development is situated on real  
13 property that has been previously developed with a building,  
14 structure, or other improvement, the non-residential development  
15 fee shall be equal to two and a half (2.5) percent of the equalized  
16 assessed value of the land and improvements on the property where  
17 the non-residential development is situated at the time the final  
18 certificate of occupancy is issued less, the equalized assessed value  
19 of the land and improvements on the property where the non-  
20 residential development is situated, as determined by the tax  
21 assessor of the municipality at the time the developer or owner <sup>1</sup>,  
22 including any previous owners,<sup>1</sup> first sought approval for a  
23 construction permit <sup>1</sup>, including, but not limited to, demolition  
24 permits,<sup>1</sup> pursuant to the State Uniform Construction Code, or  
25 approval under the "Municipal Land Use Law," P.L.1975, c.291  
26 (C.40:55D-1 et seq.). If the calculation required under this section  
27 results in a negative number, the non-residential development fee  
28 shall be zero.

29 Whenever a developer of non-residential development has made  
30 or committed itself to make a financial or other contribution relating  
31 to the provision of housing affordable to low and moderate income  
32 **'[and middle income]'** households prior to the enactment of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill),  
34 the non-residential development fee shall be reduced by the amount  
35 of the financial contribution and the fair market value of any other  
36 contribution made by or committed to be made by the developer.  
37 For purposes of this section, a developer is considered to have made  
38 or committed itself to make a financial or other contribution, if and  
39 only if: (1) the contribution has been transferred, including but not  
40 limited to when the funds have already been received by the  
41 municipality; (2) the developer has obligated itself to make a  
42 contribution as set forth in a written agreement with the  
43 municipality, such as a developer's agreement; or (3) the  
44 developer's obligation to make a contribution is set forth as a  
45 condition in a land use approval issued by a municipal land use  
46 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
47 (C.40:55D-1 et seq.)

1 d. Unless otherwise provided for by law, no municipality shall  
2 be required to return a financial or any other contribution made by  
3 or committed to be made by a developer of a non-residential  
4 development prior to the enactment of P.L. , c. (C. )  
5 (pending before the Legislature as this bill) relating to the provision  
6 of housing affordable to low and moderate income <sup>1</sup>[and middle  
7 income]<sup>1</sup> households, provided that the developer does not obtain  
8 an amended, modified, or new municipal land use approval with a  
9 substantial change in the non-residential development. If the  
10 developer obtains an amended, modified, or new land use approval  
11 for non-residential development, the municipality, person, or entity  
12 shall be required to return to the developer any funds or other  
13 contribution provided by the developer for the provision of housing  
14 affordable to low and moderate income <sup>1</sup>[and middle income]<sup>1</sup>  
15 households and the developer shall not be entitled to a reduction in  
16 the affordable housing development fee based upon that  
17 contribution.

18 e. The provisions of sections <sup>1</sup>[33] 32<sup>1</sup> through <sup>1</sup>[39] 38<sup>1</sup> of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 shall not be construed in any manner as affecting the method or  
21 timing of assessing real property for property taxation purposes.  
22 The payment of a non-residential development fee shall not increase  
23 the equalized assessed value of any property.  
24

25 <sup>1</sup>[39.] 38. a.<sup>1</sup> (New section) Except as expressly provided in  
26 P.L. , c. (C. ) (pending before the Legislature as this bill)  
27 <sup>1</sup>including subsection b. of this section<sup>1</sup>, any provision of a local  
28 ordinance which imposes a fee for the development of affordable  
29 housing upon a developer of non-residential property, including any  
30 and all development fee ordinances adopted in accordance with  
31 <sup>1</sup>[N.J.A.C.5:93-8.1 et seq., or N.J.A.C.5:94-6.1 et seq.] any  
32 regulations of the Council on Affordable Housing.<sup>1</sup> or any  
33 provision of an ordinance which imposes an obligation relating to  
34 the provision of housing affordable to low and moderate income  
35 households, or payment in-lieu of building as a condition of non-  
36 residential development, shall be void and of no effect. A provision  
37 of an ordinance which imposes a development fee which is not  
38 prohibited by any provision of P.L. , c. (C. ) (pending before  
39 the Legislature as this bill) shall not be invalidated by this section.

40 <sup>1</sup>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.<sup>1</sup>

46 <sup>2</sup>c. Whenever a developer of 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. , c. (C. ) (pending before the Legislature  
5 as this bill) shall be satisfied through the investment obligations  
6 made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).<sup>2</sup>  
7

8 <sup>1</sup>~~40.~~ <sup>1</sup>39. (New section) Sections 1 through 37 of P.L.1949,  
9 c.303 (C.55:14H-1 et seq.) and P.L.1950, c.108 <sup>1</sup>~~[(C.55:14H-~~  
10 ~~9.1)are]~~ (C.55:14H-9.1) <sup>1</sup>are repealed.  
11

12 <sup>1</sup>~~41.~~ <sup>1</sup>40. This act shall take effect immediately.