

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1**

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**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

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ADOPTED MARCH 15, 2010

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator JEFF VAN DREW**

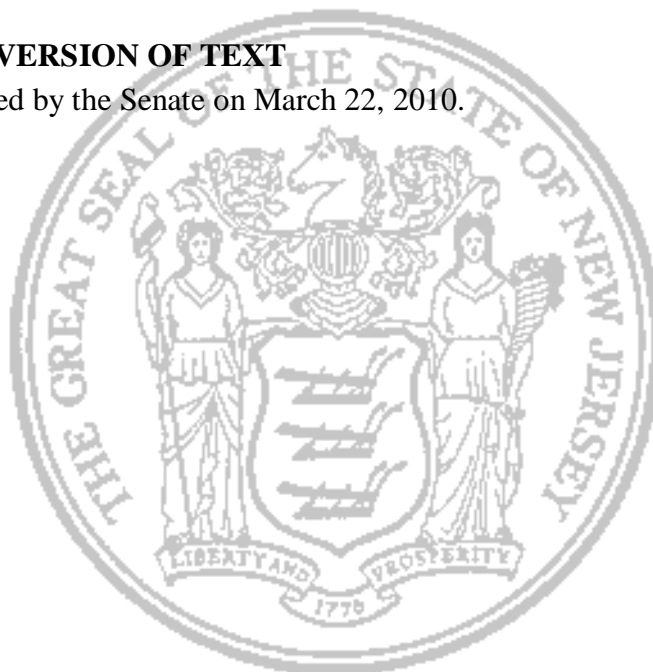
**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Reforms procedures concerning provision of affordable housing; abolishes Council on Affordable Housing.

**CURRENT VERSION OF TEXT**

As amended by the Senate on March 22, 2010.



1    **AN ACT** concerning affordable housing, amending, supplementing  
2       and repealing 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. (New section) The Legislature finds and declares that:

8       a. In an attempt to comply with the requirements enumerated  
9       by the opinions in Mount Laurel I and II, and to provide  
10       municipalities a safe haven from exclusionary zoning litigation and  
11       the builder's remedy, the Legislature established the "Fair Housing  
12       Act," P.L.1985, c.222, (C.52:27D-301 et al.) which has required a  
13       complex system of administration that micromanages all types of  
14       development, including residential, market rate and affordable, and  
15       commercial, retail and industrial, through a determination of each  
16       region and municipality's affordable housing needs based on  
17       difficult to predict and fallible population and job growth  
18       projections.

19       b. This complex system of regulation has resulted in scores of  
20       lawsuits and court decisions, and huge expenses to municipalities,  
21       the judiciary, and the State.

22       c. The most effective way of complying with the Mount Laurel  
23       I and II decisions without wasting limited resources needed to fulfill  
24       government's many functions, including public safety, health care,  
25       and environmental protection, ensuring the affordability of mass  
26       transit, education, protection of civil rights, promotion of economic  
27       growth, and job creation, is to establish a simple, rather than  
28       complex, system that maximizes the ability of the free market to  
29       produce affordable housing for low and moderate income residents  
30       of the State.

31       d. Municipalities that already have a healthy mix of affordable  
32       and market rate housing should not be encumbered with State  
33       zoning mandates that are needed to create an opportunity for an  
34       appropriate variety and choice of affordable and market rate  
35       housing in other municipalities where a reasonable variety of  
36       housing does not already exist.

37       e. By requiring those municipalities not already having a  
38       reasonable mix of affordable and market rate housing to comply  
39       with zoning mandates as established hereunder, the State will  
40       maximize the opportunity for affordable housing in those  
41       municipalities without wasting limited resources necessary to  
42       provide for the other governmental functions stated herein, which  
43       only represent some, but not all, of government's responsibility to  
44       provide for the general welfare of its residents

**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> Senate floor amendments adopted March 22, 2010.

1       f. The simple, market-driven system established hereunder will  
2       enable the State to establish a housing policy that maximizes the  
3       production of affordable housing to serve the general welfare of all  
4       the State's residents.

5  
6       2. (New section) The Council on Affordable Housing  
7       established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
8       301 et al.) is abolished, and all of its powers, functions, and duties  
9       that are not repealed herein are continued in the State Planning  
10      Commission established pursuant to section 2 of P.L.1985, c.398  
11      (C.52:18A-197), except as herein otherwise provided. Whenever,  
12      in any law rule, regulation, order, contract, document, judicial or  
13      administrative proceeding, or otherwise, reference is made to the  
14      Council on Affordable Housing, the same shall mean and refer to  
15      the State Planning Commission. All appropriations and other  
16      moneys available, and to become available, to the Council on  
17      Affordable Housing are hereby continued in the commission, and  
18      shall be available for the objects and purposes for which such  
19      moneys are appropriated, subject to any terms, restriction,  
20      limitations, or other requirements imposed by State or federal law.

21      This transfer shall be subject to the provisions of the "State  
22      Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

23  
24      3. Section 4 of P.L.1985, c.398 (C.52:18A-199) is amended to  
25      read as follows:

26      4. The commission shall:

27      a. Prepare and adopt within 36 months after the enactment of  
28      P.L.1985, c.398 (C.52:18A-196 et al.), and revise and readopt at  
29      least every **[three]** six years thereafter, the State Development and  
30      Redevelopment Plan, which shall provide a coordinated, integrated  
31      and comprehensive plan for the growth, development, renewal and  
32      conservation of the State and its regions and which shall identify  
33      areas for growth, agriculture, open space conservation and other  
34      appropriate designations;

35      b. Prepare and adopt as part of the plan a long-term  
36      Infrastructure Needs Assessment, which shall provide information  
37      on present and prospective conditions, needs and costs with regard  
38      to State, county and municipal capital facilities, including water,  
39      sewerage, transportation, solid waste, drainage, flood protection,  
40      shore protection and related capital facilities;

41      c. Develop and promote procedures to facilitate cooperation  
42      and coordination among State agencies, regional entities, and local  
43      governments with regard to the development of plans, programs and  
44      policies which affect land use, environmental, capital and economic  
45      development issues;

46      d. Provide technical assistance to local governments and  
47      regional entities in order to encourage the use of the most effective

- 1 and efficient planning and development review data, tools and  
2 procedures;
- 3 e. Periodically review State, regional, and local government  
4 planning procedures and relationships and recommend to the  
5 Governor and the Legislature administrative or legislative action to  
6 promote a more efficient and effective planning process;
- 7 f. Review any bill introduced in either house of the Legislature  
8 which appropriates funds for a capital project and may study the  
9 necessity, desirability and relative priority of the appropriation by  
10 reference to the State Development and Redevelopment Plan, and  
11 may make recommendations to the Legislature and to the Governor  
12 concerning the bill; **[and]**
- 13 g. Take all actions necessary and proper to carry out the  
14 provisions of P.L.1985, c.398 (C.52:18A-196 et al.); and
- 15 h. Assume the duties of the Council on Affordable Housing  
16 that are not repealed by P.L. , c. (pending before the Legislature  
17 as this bill) and are transferred to the commission pursuant to  
18 section 2 of P.L. , c. (C. ) and section 18 of P.L. ,  
19 c. (C. ) (pending before the Legislature as this bill).  
20 (cf: P.L.2004, c.120, s.64)
- 21
- 22 4. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
23 read as follows:
- 24 2. The Legislature finds that:
- 25 a. The New Jersey Supreme Court, through its rulings in South  
26 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)  
27 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158  
28 (1983), has determined that every municipality in a growth area has  
29 a constitutional obligation to provide through its land use  
30 regulations a realistic opportunity for a fair share of its region's  
31 present and prospective needs for housing for low and moderate  
32 income families.
- 33 b. In the second Mount Laurel ruling, the Supreme Court stated  
34 that the determination of the methods for satisfying this  
35 constitutional obligation "is better left to the Legislature," that the  
36 court has "always preferred legislative to judicial action in their  
37 field," and that the judicial role in upholding the Mount Laurel  
38 doctrine "could decrease as a result of legislative and executive  
39 action." The "Fair Housing Act," as administered by the Council on  
40 Affordable Housing, increased, rather than decreased, the judicial  
41 role and added the expense of bureaucratic paper and process at  
42 both the State and local level.
- 43 c. **[The interest of all citizens, including low and moderate**  
44 **income families in need of affordable housing, and the needs of the**  
45 **workforce, would be best served by a comprehensive planning and**  
46 **implementation response to this constitutional obligation.]** (Deleted

1 by amendment, P.L. , c. ) (pending before the Legislature as this  
2 bill)

3 d. **【There are a number of essential ingredients to a**  
4 **comprehensive planning and implementation response, including**  
5 **the establishment of reasonable fair share housing guidelines and**  
6 **standards, the initial determination of fair share by officials at the**  
7 **municipal level and the preparation of a municipal housing element,**  
8 **State review of the local fair share study and housing element, and**  
9 **continuous State funding for low and moderate income housing to**  
10 **replace the federal housing subsidy programs which have been**  
11 **almost completely eliminated.】** (Deleted by amendment, P.L. ,  
12 c. ) (pending before the Legislature as this bill)

13 e. **【The State can maximize the number of low and moderate**  
14 **income units provided in New Jersey by allowing its municipalities**  
15 **to adopt appropriate phasing schedules for meeting their fair share,**  
16 **so long as the municipalities permit a timely achievement of an**  
17 **appropriate fair share of the regional need for low and moderate**  
18 **income housing as required by the Mt. Laurel I and II opinions and**  
19 **other relevant court decisions.】** (Deleted by amendment, P.L. ,  
20 c. ) (pending before the Legislature as this bill)

21 f. The State can **【also】** maximize the number of low and  
22 moderate income units by creating new affordable housing and by  
23 rehabilitating existing, but substandard, housing in the State.  
24 Because the Legislature has determined, pursuant to P.L.2008, c.46  
25 (C.52:27D-329.1 et al.), that it is no longer appropriate or in  
26 harmony with the Mount Laurel doctrine to permit the transfer of  
27 the fair share obligations among municipalities within a housing  
28 region, it is necessary and appropriate to create a new program to  
29 create new affordable housing and to foster the rehabilitation of  
30 existing, but substandard, housing.

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

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

44 i. **【Certain amendments to the enabling act of the Council on**  
45 **Affordable Housing are necessary to provide guidance to the**  
46 **council to ensure consistency with the legislative intent, while at the**  
47 **same time clarifying the limitations of the council in its rulemaking.**

1 Although the court has remarked in several decisions that the  
2 Legislature has granted the council considerable deference in its  
3 rulemaking, the Legislature retains its power and obligation to  
4 clarify and amend the enabling act from which the council derives  
5 its rulemaking power, from time to time, in order to better guide the  
6 council.】 (Deleted by amendment, P.L. , c. ) (pending before the  
7 Legislature as this bill)

8 j. The Legislature finds that the use of regional contribution  
9 agreements, which permits municipalities to transfer a certain  
10 portion of their fair share housing obligation outside of the  
11 municipal borders, should no longer be utilized after December 31,  
12 2011 as a mechanism for the creation of affordable housing 【by the  
13 council】.

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

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

18 4. As used in this act:

19 a. "Council" means the Council on Affordable Housing  
20 established 【in this act】 by section 5 of P.L.1985, c.222 (C.52:27D-  
21 305), 【which shall have primary jurisdiction for the administration  
22 of housing obligations in accordance with sound regional planning  
23 considerations in this State】 and, pursuant to section 2 of P.L. ,  
24 c. (C. ) (pending before the Legislature as this bill) and  
25 subsequent to its effective date, the State Planning Commission.

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

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

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

- 1 e. **["Resolution of participation"** means a resolution adopted by  
2 a municipality in which the municipality chooses to prepare a fair  
3 share plan and housing element in accordance with this act.]  
4 (Deleted by amendment, P.L. , c. ) (pending before the  
5 Legislature as this bill)
- 6 f. "Inclusionary development" means a market rate residential  
7 housing development **[in which a substantial percentage of the**  
8 **housing units are provided for a reasonable income range of]** that  
9 includes units set-aside as housing affordable to low and moderate  
10 income households.
- 11 g. **["Conversion"** means the conversion of existing  
12 commercial, industrial, or residential structures for low and  
13 moderate income housing purposes where a substantial percentage  
14 of the housing units are provided for a reasonable income range of  
15 low and moderate income households.] (Deleted by amendment,  
16 P.L. , c. ) (pending before the Legislature as this bill)
- 17 h. "Development" means any development for which  
18 permission may be required pursuant to the "Municipal Land Use  
19 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 20 i. "Agency" means the New Jersey Housing and Mortgage  
21 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
22 seq.).
- 23 j. **["Prospective need"** means a projection of housing needs  
24 based on development and growth which is reasonably likely to  
25 occur in a region or a municipality, as the case may be, as a result  
26 of actual determination of public and private entities. In  
27 determining prospective need, consideration shall be given to  
28 approvals of development applications, real property transfers and  
29 economic projections prepared by the State Planning Commission  
30 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
31 196 et seq.).] (Deleted by amendment, P.L. , c. ) (pending before  
32 the Legislature as this bill)
- 33 k. "Disabled person" means a person with a physical disability,  
34 infirmity, malformation or disfigurement which is caused by bodily  
35 injury, birth defect, aging or illness including epilepsy and other  
36 seizure disorders, and which shall include, but not be limited to, any  
37 degree of paralysis, amputation, lack of physical coordination,  
38 blindness or visual impediment, deafness or hearing impediment,  
39 muteness or speech impediment or physical reliance on a service or  
40 guide dog, wheelchair, or other remedial appliance or device.
- 41 l. "Adaptable" means constructed in compliance with the  
42 technical design standards of the barrier free subcode adopted by  
43 the Commissioner of Community Affairs pursuant to the "State  
44 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
45 et seq.) and in accordance with the provisions of section 5 of  
46 P.L.2005, c.350 (C.52:27D-123.15).

1 m. "Very low income housing" means housing affordable  
2 according to federal Department of Housing and Urban  
3 Development or other recognized standards for home ownership  
4 and rental costs and occupied or reserved for occupancy by  
5 households with a gross household income equal to 30% or less of  
6 the median gross household income for households of the same size  
7 within the housing region in which the housing is located.

8 n. "Commission" means the State Planning Commission,  
9 established pursuant to section 2 of P.L.1985, c.398 (C.52:18A-  
10 197), that shall have primary jurisdiction for the administration of  
11 housing obligations in accordance with sound regional planning  
12 considerations in this State.

13 o. "Price restricted unit" means a residential dwelling unit that  
14 is price restricted, including: units that are deed restricted for  
15 occupancy by residents of low or moderate income; price restricted  
16 pursuant to covenants established for units financed by federal Low  
17 Income Housing Tax Credits; price restricted pursuant to covenants  
18 established for units developed pursuant to the "Neighborhood  
19 Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-  
20 490 et seq.); units rehabilitated as either a sending or receiving  
21 municipality under a regional contribution agreement, and subject  
22 to price controls; units built or rehabilitated as part of a Community  
23 Development Block Grant, and subject to price controls; housing  
24 units operated by a Public Housing Authority; units constructed,  
25 rehabilitated, or receiving project-based assistance under the  
26 program authorized pursuant to section 8 of the United States  
27 Housing Act of 1937.

28 p. "Special needs housing" means housing, or the residential  
29 portion of a development that is permanent supportive housing, as  
30 defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a  
31 community residence that is primarily for occupancy by individuals  
32 with special needs who shall occupy such housing as their usual and  
33 permanent residence.

34 q. "Special needs unit" means a single unit of special needs  
35 housing for one or more occupants that contains at a minimum a  
36 bedroom and a bathroom.

37 r. "Inclusionary municipality" means a municipality deemed,  
38 pursuant to section 20 of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill), to have provided a variety and choice of  
40 housing as evidenced by the quantity of price-restricted units or  
41 amount of other units, the characteristics of which demonstrate an  
42 opportunity for low-income or moderate-income housing.

43 s. "Workforce housing" means housing affordable to,  
44 according to federal Department of Housing and Urban  
45 Development or other recognized standards for home ownership  
46 and rental costs, and occupied by, or reserved for occupancy by,  
47 households with a gross household income equal to more than 80



1 percent but less than 120 percent of the median gross household  
2 income for households of the same size within the housing region in  
3 which the housing is located.

4 t. "Residential development project" means new construction  
5 resulting in the production of '[20] five' or more residential  
6 dwelling units, whether attached or detached.

7 u. "Small residential development project" means new  
8 construction resulting in the production of '[greater than five, but  
9 less than 20,] fewer than five' residential dwelling units, whether  
10 attached or detached ', and shall not mean any construction or  
11 reconstruction of a single-family dwelling that is occupied by, or  
12 intended to be occupied by, the owner' .

13 (cf: P.L.2008, c.46, s.5)

14  
15 6. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended  
16 to read as follows:

17 1. As used in this act:

18 "Agency" means the Housing and Mortgage Finance Agency  
19 established pursuant to section 4 of the "New Jersey Housing and  
20 Mortgage Finance Agency Law of 1983," P.L.1983, c.530  
21 (C.55:14K-4).

22 "Commissioner" means the Commissioner of Community  
23 Affairs.

24 "Council" means the Council on Affordable Housing created by  
25 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,  
26 pursuant to section 2 of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill) subsequent to its effective date, the State  
28 Planning Commission.

29 "Department" means the Department of Community Affairs.

30 "Housing region" means a housing region as determined by the  
31 【Council on Affordable Housing】 State Planning Commission  
32 pursuant to section 【7 of P.L.1985, c.222 (C.52:27D-307)】 18 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).

34 "Project" or "housing project" means any specific work or  
35 undertaking for the purpose of providing housing accommodations,  
36 whether by new construction or by rehabilitation or adaptation of  
37 existing structures, that shall be affordable to persons and families  
38 of low or moderate income within the meaning of the "Fair Housing  
39 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or  
40 undertaking may include the acquisition, construction or  
41 rehabilitation of lands, buildings and improvements, and such  
42 stores, offices, and social, recreational, communal or other facilities  
43 as may be incidental or appurtenant to the housing accommodations  
44 that are to be provided.

45 "Register" means the Register of Housing Projects directed by  
46 section 2 of 【this act】 P.L.1991, c.479 (C.52:27D-307.2) to be

1 established and maintained by the commissioner.

2 (cf: P.L.1991, c.479, s.1)

3

4 7. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended  
5 to read as follows:

6 3. a. The commissioner shall cause to be developed a system  
7 for assigning and designating priority ratings to each project  
8 included in the register. Priority ratings shall be based upon the  
9 following factors, giving to each factor such weight as the  
10 commissioner shall judge to be appropriate:

11 (1) Feasibility. Each project shall be evaluated for its physical  
12 and financial feasibility, giving consideration to the capabilities of  
13 the proposed sponsor or developer, market conditions and  
14 regulatory requirements in the locality for which it is proposed, and  
15 the availability of financing in sufficient amount and at reasonable  
16 cost.

17 (2) Desirability. Each project shall be evaluated with relation to  
18 its probable effect in meeting the affordable housing needs of the  
19 housing region in which it is to be located, in accordance with the  
20 standards and criteria of the 【council】 State Planning Commission.  
21 Consideration shall be given to (a) the number of affordable  
22 dwelling units that the project would provide, (b) the proportion of  
23 affordable units to the total number of units envisaged in the project  
24 plan, (c) the distribution of those affordable units as between those  
25 affordable to persons and families of low income and those of  
26 moderate income, considered in relation to the needs of the housing  
27 region, (d) appropriateness of the proposed tenure of the affordable  
28 units, whether to be rental or owner-occupied, in relation to the  
29 needs of the housing region, and (e) appropriateness of the proposed  
30 distribution of units as to family size, in relation to the needs of the  
31 housing region.

32 (3) Efficiency. Each project shall be evaluated on the basis of  
33 the cost to the State, in terms of financial assistance granted or  
34 revenue forgone in order to further the project, for each affordable  
35 dwelling unit judged by the commissioner to be feasible and  
36 desirable according to the terms of the proposal or application made  
37 for such assistance.

38 b. In developing the system of assigning and designating  
39 priorities, and in evaluating individual projects for such assignment  
40 and designation in the register, the commissioner shall consult with  
41 the executive director of the agency and the executive director of  
42 the 【council】 State Planning Commission. The 【council】 person  
43 having control over the project and the agency shall promptly and  
44 fully supply the commissioner with all relevant information  
45 necessary for the commissioner's timely and complete fulfillment of  
46 the requirements of this act.

47 (cf: P.L.1991, c.479, s.3)

1       8. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended  
2 to read as follows:

3       4. a. Any officer or employee of the department, including any  
4 member, officer or employee of the agency [or the council], who  
5 receives from any person any solicitation, application, proposal or  
6 communication of any kind, whether oral or in writing, aimed at  
7 furthering the assistance of any project shall promptly report the  
8 same to the commissioner. The report shall identify the person or  
9 persons making such communication. If any such person is not  
10 identified in the register in accordance with the requirements of  
11 subsection b. of section 2 of this act, the report shall state the  
12 person's relationship to the sponsor or developer of the project and  
13 the capacity in which the person represents himself or herself to be  
14 acting on behalf of the sponsor or developer; or if the person fails or  
15 refuses to supply that information, the report shall so state.

16       b. The commissioner shall develop a procedure or procedures  
17 by which reports required under subsection a. of this section shall  
18 be made either to the commissioner directly or through such  
19 administrative channels as the commissioner shall devise and direct.  
20 Notwithstanding the provisions of subsection i. of section 4 of  
21 P.L.1983, c.530 (C.55:14K-4) [and subsection a. of section 5 of  
22 P.L.1985, c.222 (C.52:27D-305) ], the regulations adopted by the  
23 commissioner in fulfillment of this subsection shall be of full force  
24 and application on and within the agency [and the council]; and all  
25 members, officers and employees of the agency [and council] shall  
26 give full compliance with and obedience to the rules and orders of  
27 the commissioner made in pursuance of his duties and  
28 responsibilities under this act.

29       c. Reports made to the commissioner shall be promptly  
30 forwarded by him, not later than 10 days after their receipt, to the  
31 Governor and to the presiding officers of the Houses of the  
32 Legislature, who shall cause all members of their respective Houses  
33 to be notified of the receipt of those reports and shall make  
34 adequate provision for the inspection of the commissioner's reports  
35 by members and committees of either House, and for the  
36 dissemination of those reports to the public. The reports forwarded  
37 by the commissioner shall in each instance indicate the priority  
38 rating that has been assigned in the register to the project to which  
39 the report relates.

40 (cf: P.L.1991, c.479, s.4)

41

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

44       11. a. [In adopting its housing element, the municipality may  
45 provide for its fair share of low and moderate income housing by  
46 means of any technique or combination of techniques which provide  
47 a realistic opportunity for the provision of the fair share. The

1 housing element shall contain an analysis demonstrating that it will  
2 provide such a realistic opportunity, and the municipality shall  
3 establish that its land use and other relevant ordinances have been  
4 revised to incorporate the provisions for low and moderate income  
5 housing. In preparing the housing element, the municipality shall  
6 consider the following techniques for providing low and moderate  
7 income housing within the municipality, as well as such other  
8 techniques as may be published by the council or proposed by the  
9 municipality:

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

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

18 (3) Determination of measures that the municipality will take to  
19 assure that low and moderate income units remain affordable to low  
20 and moderate income households for an appropriate period of not  
21 less than six years;

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

25 (5) Donation or use of municipally owned land or land  
26 condemned by the municipality for purposes of providing low and  
27 moderate income housing;

28 (6) Tax abatements for purposes of providing low and moderate  
29 income housing;

30 (7) Utilization of funds obtained from any State or federal  
31 subsidy toward the construction of low and moderate income  
32 housing;

33 (8) Utilization of municipally generated funds toward the  
34 construction of low and moderate income housing; and

35 (9) The purchase of privately owned real property used for  
36 residential purposes at the value of all liens secured by the property;  
37 excluding any tax liens, notwithstanding that the total amount of  
38 debt secured by liens exceeds the appraised value of the property,  
39 pursuant to regulations promulgated by the Commissioner of  
40 Community Affairs pursuant to subsection b. of section 41 of  
41 P.L.2000, c.126 (C.52:27D-311.2).] (Deleted by amendment,  
42 P.L. , c. ) (pending before the Legislature as this bill)

43 b. **【**The municipality may provide for a phasing schedule for  
44 the achievement of its fair share of low and moderate income  
45 housing.**】** (Deleted by amendment, P.L. , c. ) (pending before the  
46 Legislature as this bill)

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

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

4 e. **【When a municipality's housing element includes the**  
5 **provision of rental housing units in a community residence for the**  
6 **developmentally disabled, as defined in section 2 of P.L.1977,**  
7 **c.448 (C.30:11B-2), which will be affordable to persons of low and**  
8 **moderate income, and for which adequate measures to retain such**  
9 **affordability pursuant to paragraph (3) of subsection a. of this**  
10 **section are included in the housing element, those housing units**  
11 **shall be fully credited as permitted under the rules of the council**  
12 **towards the fulfillment of the municipality's fair share of low and**  
13 **moderate income housing.】** (Deleted by amendment, P.L. , c. )  
14 (pending before the Legislature as this bill)

15 f. **【It having been determined by the Legislature that the**  
16 **provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is**  
17 **a public purpose, a municipality or municipalities may utilize public**  
18 **monies to make donations, grants or loans of public funds for the**  
19 **rehabilitation of deficient housing units and the provision of new or**  
20 **substantially rehabilitated housing for low and moderate persons,**  
21 **providing that any private advantage is incidental.】** (Deleted by  
22 amendment, P.L. , c. ) (pending before the Legislature as this  
23 bill)

24 g. **【A municipality which has received substantive certification**  
25 **from the council, and which has actually effected the construction**  
26 **of the affordable housing units it is obligated to provide, may**  
27 **amend its affordable housing element or zoning ordinances without**  
28 **the approval of the council.】** (Deleted by amendment, P.L. , c. )  
29 (pending before the Legislature as this bill)

30 h. **【Whenever affordable housing units are proposed to be**  
31 **provided through an inclusionary development, a municipality shall**  
32 **provide, through its zoning powers, incentives to the developer,**  
33 **which shall include increased densities and reduced costs, in**  
34 **accordance with the regulations of the council and this subsection.】**  
35 (Deleted by amendment, P.L. , c. ) (pending before the  
36 Legislature as this bill)

37 i. **【The council, upon the application of a municipality and a**  
38 **developer, may approve reduced affordable housing set-asides or**  
39 **increased densities to ensure the economic feasibility of an**  
40 **inclusionary development.】** (Deleted by amendment, P.L. , c. )  
41 (pending before the Legislature as this bill)  
42 (cf: P.L.2008, c.46, s.15)

43  
44 10. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to  
45 read as follows:

1        1. Beginning upon the effective date of P.L.2005, c.350  
 2        (C.52:27D-311a et al.), in order to be considered a price restricted  
 3        unit for purposes of a determination pursuant to section 20 of  
 4        P.L. , c. (C. ), any new construction **【for which credit is**  
 5        **sought against a fair share obligation】** shall be adaptable in  
 6        accordance with the provisions of section 5 of P.L.2005, c.350  
 7        (C.52:27D-123.15). For the purposes of P.L.2005, c.350  
 8        (C.52:27D-311a et al.), "new construction" shall mean an entirely  
 9        new improvement not previously occupied or used for any purpose.  
 10        (cf: P.L.2005, c.350, s.1)

11  
 12        11. Section 6 of P.L. 2005, c.350 (C.52:27D-311b) is amended  
 13        to read as follows:

14        6. The **【council】** commission may take such measures as are  
 15        necessary to assure compliance with the adaptability requirements  
 16        imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
 17        including the inspection of those units which are newly constructed  
 18        and receive housing credit as provided under section 1 of P.L.2005,  
 19        c.350 (C.52:27D-311a) and section 20 of P.L. , c. (C. )  
 20        (pending before the Legislature as this bill) for adaptability, as part  
 21        of the monitoring which occurs pursuant to P.L.1985, c.222  
 22        (C.52:27D-301 et al.). **【If any units for which credit was granted in**  
 23        **accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a**  
 24        **et al.) are found not to conform to the requirements of P.L.2005,**  
 25        **c.350 (C.52:27D-311a et al.), the council may require the**  
 26        **municipality to amend its fair share plan within 90 days of**  
 27        **receiving notice from the council, to address its fair share obligation**  
 28        **pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that**  
 29        **the municipality fails to amend its fair share plan within 90 days of**  
 30        **receiving such notice, the council may revoke substantive**  
 31        **certification.】**  
 32        (cf: P.L.2005, c.350, s.6)

33  
 34        12. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
 35        read as follows:

36        12. a. Except as prohibited under P.L.2008, c.46 (C.52:27D-  
 37        329.1 et al.), a municipality may propose the transfer of up to 50%  
 38        of its fair share to another municipality within its housing region by  
 39        means of a contractual agreement into which two municipalities  
 40        voluntarily enter. A municipality may also propose a transfer by  
 41        contracting with the agency or another governmental entity  
 42        designated by the council if the council determines that the  
 43        municipality has exhausted all possibilities within its housing  
 44        region. A municipality proposing to transfer to another  
 45        municipality, whether directly or by means of a contract with the  
 46        agency or another governmental entity designated by the council,  
 47        shall provide the council with the housing element and statement

1 required under subsection c. of section 11 of P.L.1985, c.222  
2 (C.52:27D-311), and shall request the council to determine a match  
3 with a municipality filing a statement of intent pursuant to  
4 subsection e. of this section. Except as provided in subsection b. of  
5 this section, the agreement may be entered into upon obtaining  
6 substantive certification under section 14 of P.L.1985, c.222  
7 (C.52:27D-314), or anytime thereafter. The regional contribution  
8 agreement entered into shall specify how the housing shall be  
9 provided by the second municipality, hereinafter the receiving  
10 municipality, and the amount of contributions to be made by the  
11 first municipality, hereinafter the sending municipality.

12 b. A municipality which is a defendant in an exclusionary  
13 zoning suit and which has not obtained substantive certification  
14 pursuant to P.L.1985, c.222 may request the court to be permitted to  
15 fulfill a portion of its fair share by entering into a regional  
16 contribution agreement. If the court believes the request to be  
17 reasonable, the court shall request the council to review the  
18 proposed agreement and to determine a match with a receiving  
19 municipality or municipalities pursuant to this section. The court  
20 may establish time limitations for the council's review, and shall  
21 retain jurisdiction over the matter during the period of council  
22 review. If the court determines that the agreement provides a  
23 realistic opportunity for the provision of low and moderate income  
24 housing within the housing region, it shall provide the sending  
25 municipality a credit against its fair share for housing to be  
26 provided through the agreement in the manner provided in this  
27 section. The agreement shall be entered into prior to the entry of a  
28 final judgment in the litigation. In cases in which a final judgment  
29 was entered prior to the date P.L.1985, c.222 takes effect and in  
30 which an appeal is pending, a municipality may request  
31 consideration of a regional contribution agreement; provided that it  
32 is entered into within 120 days after P.L.1985, c.222 takes effect.  
33 In a case in which a final judgment has been entered, the court shall  
34 consider whether or not the agreement constitutes an expeditious  
35 means of providing part of the fair share. [Notwithstanding this  
36 subsection, no consideration shall be given to any regional  
37 contribution agreement of which the council did not complete its  
38 review and formally approve a recommendation to the court prior to  
39 the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).]

40 c. [Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1  
41 et al.), regional contribution agreements shall be approved by the  
42 council, after review by the county planning board or agency of the  
43 county in which the receiving municipality is located. The council  
44 shall determine whether or not the agreement provides a realistic  
45 opportunity for the provision of low and moderate income housing  
46 within convenient access to employment opportunities. The council  
47 shall refer the agreement to the county planning board or agency

1 which shall review whether or not the transfer agreement is in  
2 accordance with sound, comprehensive regional planning. In its  
3 review, the county planning board or agency shall consider the  
4 master plan and zoning ordinance of the sending and receiving  
5 municipalities, its own county master plan, and the State  
6 development and redevelopment plan. In the event that there is no  
7 county planning board or agency in the county in which the  
8 receiving municipality is located, the council shall also determine  
9 whether or not the agreement is in accordance with sound,  
10 comprehensive regional planning. After it has been determined that  
11 the agreement provides a realistic opportunity for low and moderate  
12 income housing within convenient access to employment  
13 opportunities, and that the agreement is consistent with sound,  
14 comprehensive regional planning, the council shall approve the  
15 regional contribution agreement by resolution. All determinations  
16 of a county planning board or agency shall be in writing and shall  
17 be made within such time limits as the council may prescribe,  
18 beyond which the council shall make those determinations and no  
19 fee shall be paid to the county planning board or agency pursuant to  
20 this subsection.】 (Deleted by amendment, P.L. , c. ) (pending  
21 before the Legislature as this bill)

22 d. In approving a regional contribution agreement, the council  
23 shall set forth in its resolution a schedule of the contributions to be  
24 appropriated annually by the sending municipality. A copy of the  
25 adopted resolution shall be filed promptly with the Director of the  
26 Division of Local Government Services in the Department of  
27 Community Affairs, and the director shall thereafter not approve an  
28 annual budget of a sending municipality if it does not include  
29 appropriations necessary to meet the terms of the resolution.  
30 Amounts appropriated by a sending municipality for a regional  
31 contribution agreement pursuant to this section are exempt from the  
32 limitations or increases in final appropriations imposed under  
33 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

34 e. The council shall maintain current lists of municipalities  
35 which have stated an intent to enter into regional contribution  
36 agreements as receiving municipalities, and shall establish  
37 procedures for filing statements of intent with the council. No  
38 receiving municipality shall be required to accept a greater number  
39 of low and moderate income units through an agreement than it has  
40 expressed a willingness to accept in its statement, but the number  
41 stated shall not be less than a reasonable minimum number of units,  
42 not to exceed 100, as established by the council. The council shall  
43 require a project plan from a receiving municipality prior to the  
44 entering into of the agreement, and shall submit the project plan to  
45 the agency for its review as to the feasibility of the plan prior to the  
46 council's approval of the agreement. The agency may recommend  
47 and the council may approve as part of the project plan a provision



1 that the time limitations for contractual guarantees or resale controls  
2 for low and moderate income units included in the project shall be  
3 less than 30 years, if it is determined that modification is necessary  
4 to assure the economic viability of the project.

5 f. The council shall establish guidelines for the duration and  
6 amount of contributions in regional contribution agreements. In  
7 doing so, the council shall give substantial consideration to the  
8 average of: (1) the median amount required to rehabilitate a low and  
9 moderate income unit up to code enforcement standards; (2) the  
10 average internal subsidization required for a developer to provide a  
11 low income housing unit in an inclusionary development; (3) the  
12 average internal subsidization required for a developer to provide a  
13 moderate income housing unit in an inclusionary development.  
14 Contributions may be prorated in municipal appropriations  
15 occurring over a period not to exceed ten years and may include an  
16 amount agreed upon to compensate or partially compensate the  
17 receiving municipality for infrastructure or other costs generated to  
18 the receiving municipality by the development. Appropriations  
19 shall be made and paid directly to the receiving municipality or  
20 municipalities or to the agency or other governmental entity  
21 designated by the council, as the case may be.

22 g. The council shall require receiving municipalities to file  
23 annual reports with the agency setting forth the progress in  
24 implementing a project funded under a regional contribution  
25 agreement, and the agency shall provide the council with its  
26 evaluation of each report. The council shall take such actions as  
27 may be necessary to enforce a regional contribution agreement with  
28 respect to the timely implementation of the project by the receiving  
29 municipality.

30 [No] Except as otherwise provided in this section, no  
31 consideration shall be given to any regional contribution agreement  
32 for which the council did not complete its review and grant  
33 approval prior to the effective date of P.L.2008, c.46 (C. 52:27D-  
34 329.1 et al.).

35 h. (1) Notwithstanding any law, rule or regulation to the  
36 contrary, the State Planning Commission shall, prior to or on  
37 December 31, 2011, review and either grant approval to or  
38 disapprove any regional contribution agreement when the sending  
39 municipality, prior to July 17, 2008, by resolution, authorized the  
40 execution of a regional contribution agreement and the resolution  
41 identifies either a proposed number of units to be credited to the  
42 sending municipality or the dollar value of the total transfer  
43 amount.

44 (2) When reviewing a regional contribution agreement pursuant  
45 to this subsection, the State Planning Commission may apply the  
46 regulations of the Council on Affordable Housing in effect at the  
47 time the agreement was entered into, or may revise and adopt

regulations concerning regional contribution agreements in order to effectuate the requirements and policy of P.L. , c. (C. ) (pending before the Legislature as this bill).

(3) The commission shall record specific, judicially reviewable findings of fact concerning any action taken by the commission concerning the proposed regional contribution agreement.

(4) All projects funded by a regional contribution agreement and located in a receiving municipality shall obtain either a preliminary approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46) or approval of a general development plan pursuant to section 5 of 41 P.L.1987, c.129 (C.40:55D-45.3) within four years of approval by the commission pursuant to paragraph (1) of this subsection. If the project does not receive a preliminary approval or approval of a general development plan within the time period provided in this paragraph, the receiving municipality shall be required to transfer the remaining unspent balance of amounts transferred pursuant to the regional contribution agreement to the "Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

(cf. P.L.2008, c.46, s.16)

13. Section 41 of P.L.2009, c.90 (C.52:27D-320.1) is amended to read as follows:

41. a. Notwithstanding any law to the contrary, there is appropriated \$15 million to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) **],** to replace the suspended non-residential development fee established under the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) **].**

b. (1) Municipalities authorized by **]**the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) **]** section <sup>1</sup>**[[28]** <sup>1</sup>**29** of P.L. , c. (C. ) (pending before the Legislature as this bill) to directly receive and use **]**development fees **]** payments in lieu of construction are permitted to petition the commissioner for the award of a grant or loan of any portion of the appropriation described in subsection a. of this section. The commissioner shall award grants or loans from the fund to municipalities that **]**incorporated **]** approve anticipated or existing housing projects and programs funded by a municipal <sup>1</sup>**]**development <sup>1</sup> trust fund **]**in a housing element submitted to the council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307). <sup>1</sup> <sup>1</sup>

(2) The commissioner shall target the award of any grant or loan to municipalities based on the extent that their housing plan relied

1 on housing projects or programs funded in part or in whole by  
2 municipal 'development' trust fund revenues.

3 (cf: P.L.2009, c.90 s.41)

4  
5 14. Section 12 of P.L.2008, c.46 (C.52:27D-329.6) is amended  
6 to read as follows:

7 12. The Legislature finds and declares that:

8 a. The transfer of a portion of the fair share obligations among  
9 municipalities has proven to not be a viable method of ensuring that  
10 an adequate supply and variety of housing choices are provided in  
11 municipalities experiencing growth. Therefore, the use of a  
12 regional contribution agreement shall no longer be permitted under  
13 P.L.1985, c.222 (C.52:27D-301 et al.), except as permitted pursuant  
14 to subsection h. of section 12 of P.L.1985, c.222 (C.52:27D-312).

15 b. **【Although the elimination of the regional contribution**  
16 **agreement as a tool for the production of affordable housing**  
17 **pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on**  
18 **some proposed agreements awaiting approval it is for a public**  
19 **purpose and for the public good that such contracts be declared void**  
20 **for the current and future housing obligation rounds.】** (Deleted by  
21 amendment, P.L. , c. ) (pending before the Legislature as this  
22 bill)

23 c. There is a need to assist municipalities in the rehabilitation  
24 of housing for occupancy by low and moderate income households.  
25 To this end, a specific program for housing rehabilitation by  
26 municipalities would best serve this need. It is the intent of the  
27 Legislature that this program, as well as funds earmarked for the  
28 purposes of the program, will be utilized, especially in urban areas  
29 which were the main recipients of regional contribution agreements,  
30 to continue to upgrade housing stock in order to provide a wide  
31 variety and choice of housing for persons living in those areas.

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

35 (cf: P.L.2008, c.46, s.12)

36  
37 15. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended  
38 to read as follows:

39 18. a. **【Notwithstanding any rules of the council to the contrary,**  
40 **for developments consisting of newly-constructed residential units**  
41 **located, or to be located, within the jurisdiction of any regional**  
42 **planning entity required to adopt a master plan or comprehensive**  
43 **management plan pursuant to statutory law, including the New**  
44 **Jersey Meadowlands Commission pursuant to subsection (i) of**  
45 **section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission**  
46 **pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,**  
47 **c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization**

1 Planning Authority pursuant to section 5 of P.L.2006, c.16  
 2 (C.52:27I-5), or its successor, and the Highlands Water Protection  
 3 and Planning Council pursuant to section 11 of P.L.2004, c.120  
 4 (C.13:20-11), but excluding joint planning boards formed pursuant  
 5 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be  
 6 required to be reserved for occupancy by low or moderate income  
 7 households at least 20 percent of the residential units constructed, to  
 8 the extent this is economically feasible.】 (Deleted by amendment,  
 9 P.L. , c. ) (pending before the Legislature as this bill)

10 b. A developer of a project consisting of newly-constructed  
 11 residential units being financed in whole or in part with State funds,  
 12 including, but not limited to, transit villages designated by the  
 13 Department of Transportation, units constructed on State-owned  
 14 property, and urban transit hubs as defined pursuant to section 2 of  
 15 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least  
 16 **【20】 10** percent of the residential units constructed for occupancy  
 17 by low or moderate income households, as those terms are defined  
 18 in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability  
 19 controls as required under the rules of the **【council】** commission,  
 20 unless the municipality in which the property is located has  
 21 received **【substantive certification from the council and such a**  
 22 **reservation is not required under the approved affordable housing**  
 23 **plan, or the municipality has been given】** a judgment of repose or a  
 24 judgment of compliance by the court, and such a reservation is not  
 25 required under the approved affordable housing plan.

26 c. **【(1)** The Legislature recognizes that regional planning  
 27 entities are appropriately positioned to take a broader role in the  
 28 planning and provision of affordable housing based on regional  
 29 planning considerations. In recognition of the value of sound  
 30 regional planning, including the desire to foster economic growth,  
 31 create a variety and choice of housing near public transportation,  
 32 protect critical environmental resources, including farmland and  
 33 open space preservation, and maximize the use of existing  
 34 infrastructure, there is created a new program to foster regional  
 35 planning entities.

36 (2) The regional planning entities identified in subsection a. of  
 37 this section shall identify and coordinate regional affordable  
 38 housing opportunities in cooperation with municipalities in areas  
 39 with convenient access to infrastructure, employment opportunities,  
 40 and public transportation. Coordination of affordable housing  
 41 opportunities may include methods to regionally provide housing in  
 42 line with regional concerns, such as transit needs or opportunities,  
 43 environmental concerns, or such other factors as the council may  
 44 permit; provided, however, that such provision by such a regional  
 45 entity may not result in more than a 50 percent change in the fair  
 46 share obligation of any municipality; provided that this limitation  
 47 shall not apply to affordable housing units directly attributable to

1 development by the New Jersey Sports and Exposition Authority  
2 within the New Jersey Meadowlands District.

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

10 (4) The coordination of affordable housing opportunities by  
11 regional entities as identified in this section shall not include  
12 activities which would provide housing units to be located in those  
13 municipalities that are eligible to receive aid under the "Special  
14 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or  
15 are coextensive with a school district which qualified for  
16 designation as a "special needs district" pursuant to the "Quality  
17 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at  
18 any time in the last 10 years has been qualified to receive assistance  
19 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the  
20 jurisdiction of any of the regional entities specified in subsection a.  
21 of this section. Deleted by amendment, P.L. , c. ) (pending  
22 before the Legislature as this bill)  
23 (cf: P.L.2008, c.46, s.18)

24  
25 16. Section 23 of P.L.2008, c.46 (C.52:27D-329.12) is amended  
26 to read as follows:

27 23. As used in sections 21 through 30 of P.L.2008, c.46  
28 (C.52:27D-329.10 through C.52:27D-329.19):

29 "Agency" means the New Jersey Housing and Mortgage Finance  
30 Agency.

31 "Commission" means the State Housing Commission established  
32 pursuant to section 24 of P.L.2008, c.46 (C.52:27D-329.13).

33 "Council" means the New Jersey Council on Affordable  
34 Housing.

35 "Department" means the Department of Community Affairs.

36 **["Middle income housing"]** "Workforce housing" means  
37 housing affordable according to federal Department of Housing and  
38 Urban Development or other recognized standards for home  
39 ownership and rental costs and occupied or reserved for occupancy  
40 by households with a gross household income equal to or more than  
41 80% but less than 120% of the median gross household income for  
42 households of the same size within the housing region in which the  
43 housing is located.

44 "Plan" means the Annual Strategic Housing Plan prepared  
45 pursuant to section 27 of P.L.2008, c.46 (C.52:27D-329.16).

1 "Report" means the Annual Housing Performance Report  
2 required to be prepared pursuant to section 29 of P.L.2008, c.46  
3 (C.52:27D-329.18).

4 "Senior Deputy Commissioner for Housing" means the position  
5 established within the department which is charged with overseeing  
6 all housing programs.

7 "Working group" means the interdepartmental working group  
8 created pursuant to section 26 of P.L.2008, c.46 (C.52:27D-329.15).  
9 (cf. P.L.2008, c.46, s.23)

10  
11 17. Section 30 of P.L.2008, c.46 (C.52:27D-329.19) is amended  
12 to read as follows:

13 30. a. The position of Senior Deputy Commissioner for Housing  
14 is established within the department, which position shall be filled  
15 by an individual with recognized and extensive experience in  
16 housing policy, planning, and development with particular emphasis  
17 on the planning and development of workforce housing and housing  
18 affordable to low [.] and moderate [, and middle] income  
19 households.

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

23 c. The commissioner may appoint the Senior Deputy  
24 Commissioner for Housing as his or her designee to chair the  
25 agency, the commission, or the council, in which capacity or  
26 capacities the Senior Deputy Commissioner for Housing will have  
27 all of the powers vested in those positions by law.

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

29  
30 18. (New section) It shall be the duty of the State Planning  
31 Commission to administer the "Fair Housing Act," P.L.1985, c.222  
32 (C.52:27D-301 et al.) and to assist municipalities that are  
33 developing toward fulfilling their obligation to provide an  
34 appropriate variety and choice of housing, including housing for  
35 low- and moderate-income families. The commission shall:

36 a. Determine the housing regions of the State, for the use and  
37 information of municipalities;

38 b. Promulgate guidelines and criteria for housing elements  
39 prepared pursuant to section 19 of the "Municipal Land Use Law,"  
40 P.L.1975, c.291 (C.40:55D-28) <sup>1</sup>["and section 10 of the "Fair  
41 Housing Act," P.L.1985, c.222 (C.52:27D-310)"]<sup>1</sup>;

42 c. Pursuant to subsection b. of section 20 of P.L. ,  
43 c. (C. ), make a determination of whether a municipality is an  
44 inclusionary municipality;

45 d. Establish guidelines or model language for covenants or  
46 other devices to maintain the affordability of inclusionary units

1 developed pursuant to P.L. , c. (C. ) (pending before the  
2 Legislature as this bill); and

3 e. Establish affirmative marketing requirements for those  
4 inclusionary units developed pursuant to section 21 of P.L. ,  
5 c. (C. ) (pending before the Legislature as this bill).

6 Pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
7 (C.52:14B-1 et seq.), the State Planning Commission may  
8 promulgate any rules and regulations necessary to effectuate the  
9 purposes of this section.

10  
11 19. (New section) a. Within 30 days following the effective  
12 date of P.L. , c. (C. ), a municipality shall apply to the  
13 commission for a determination of whether the municipality is an  
14 inclusionary municipality that shall be deemed to have provided for  
15 its portion of the region's opportunity for low and moderate-income  
16 housing.

17 b. (1) A municipality that has not met the criteria in section 20  
18 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
19 may reapply to the commission, at anytime during the six-year  
20 planning cycle, based upon additional evidence that those criteria  
21 have been satisfied.

22 (2) A municipality that does not meet the criteria in section 20  
23 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
24 may, nevertheless, be deemed to meet those criteria if it adopts an  
25 ordinance providing that at least one fifth of its vacant, developable  
26 property having reasonable access to sewer service, shall be  
27 reserved for use as an inclusionary development as defined in  
28 subsection f. of section 4 of P.L.1985, c.222 (C.52:27D-304).

29 c. An application from a municipality shall contain an analysis  
30 of the municipality's housing stock for determination of whether the  
31 municipality is an inclusionary municipality as defined in section  
32 20 of P.L. , c. (C. ) (pending before the Legislature as this  
33 bill).

34  
35 20. (New section) a. The commission shall determine that a  
36 municipality is an inclusionary municipality if:

37 (1) seven and one-half percent of its total present housing stock  
38 is price restricted units; or

39 (2) 33 percent of the housing stock is: single-family attached  
40 housing; or mobile homes located a mobile home park as defined in  
41 subsection d. of section 3 of P.L.1986, c.386 (C.40:55D-102); or  
42 multiple dwellings as defined pursuant to subsection k. of section 3  
43 of P.L.1967, c.76 (C.55:13A-3), provided that multiple dwellings  
44 that are determined to be luxury dwellings by the State Planning  
45 Commission shall not be counted.

46 b. In making a determination pursuant to this section, the  
47 commission shall give special needs housing units newly

1 constructed following the effective date of P.L. , c. (C. )  
 2 (pending before the Legislature as this bill) twice as much weight  
 3 as their actual proportion of a municipality's housing stock when  
 4 making a determination of whether a municipality is an inclusionary  
 5 municipality.

6 c. For units constructed following the effective date of  
 7 P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price  
 8 restricted for purposes of a determination pursuant to this section, a  
 9 unit shall be adaptable as described in section 5 of P.L.2005, c.350  
 10 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-  
 11 311a).

12 d. A municipality that received substantive certification under  
 13 the Council on Affordable Housing's most recently adopted ("third  
 14 round rules") shall be considered an inclusionary municipality  
 15 pursuant to this section until the end of its approved certification  
 16 period; provided that the municipality continues to fully and  
 17 faithfully implement the provisions of its fair-share plan.

18 e. The commission shall review any application for a  
 19 determination that a municipality is an inclusionary municipality  
 20 and render a determination within 90 days. A determination of  
 21 whether a municipality is inclusionary shall be based upon a  
 22 municipality's existing housing stock. Units transferred through a  
 23 regional contribution agreement shall be fully credited to the  
 24 sending municipality for purposes of determining whether a  
 25 municipality is an inclusionary municipality.

26 f. Any party may appeal a determination made by the  
 27 commission to the Superior Court.

28 For purposes of this section, "single family attached housing"  
 29 means two or more dwelling units sharing a wall that extends from  
 30 ground to roof with an adjoining unit, with no other units above or  
 31 below, with separate major utility systems and metering.

32  
 33 21. (New section) a. (1) For any new residential development  
 34 project, as defined in subsection '1[s.] t.' of section 4 of P.L.1985,  
 35 c.222 (C.52:27D-304) '(pending before the Legislature as this bill)'  
 36 , and any redevelopment, rehabilitation, infill development, or  
 37 adaptive reuse of a residential development project that would  
 38 qualify as a residential development project if it was new  
 39 construction, a municipality shall require that one out of every  
 40 '10 five' residential housing units proposed as part of that project  
 41 be reserved for occupancy as low income or moderate income  
 42 housing. For the purposes of this reservation, one special needs  
 43 housing unit shall count as two housing units.

44 (2) For any new small residential development project, as  
 45 defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-  
 46 304), and any redevelopment, rehabilitation, infill development, or  
 47 adaptive reuse of a residential or small residential development



1 project that would qualify as a small residential development  
2 project if it was new construction, a municipality shall require that  
3 '[one out of every 20 residential housing units proposed as part of  
4 that project be reserved for occupancy as low income or moderate  
5 income housing. For the purposes of this reservation, one special  
6 needs housing unit shall count as two housing units] in lieu of  
7 constructing affordable units, a deposit of two and one-half percent  
8 of documented construction costs for the project shall be deposited  
9 into a municipal trust fund established pursuant to section 29 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill).  
11 Nothing in this paragraph shall be construed to require a payment in  
12 lieu of construction of affordable units for a small residential  
13 development project when the developer is providing for the on-site  
14 construction of affordable units<sup>1</sup>.

15 b. Where land use or other local government approvals are  
16 required, a municipality shall make a reasonable effort to facilitate  
17 the economic viability of an inclusionary development developed  
18 pursuant to the requirements of this section.

19 c. A municipality, in evaluating the economic viability of an  
20 application for an inclusionary development, may be guided by the  
21 applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the  
22 regulations of the Council on Affordable Housing for the housing  
23 round beginning June 2, 2008.

24 d. Residential development projects resulting in a fractional  
25 unit reserved for occupancy by low-income or moderate-income  
26 households, shall make a payment in lieu of construction into a  
27 municipal trust fund established by a municipality pursuant to  
28 section '[30] 29' of P.L. , c. (C. ) (pending before the  
29 Legislature as this bill) or into the "New Jersey Affordable Housing  
30 Trust Fund," established pursuant to section 20 of P.L.1985, c.222  
31 (C.52:27D-320). The commission shall promulgate guidelines for  
32 payments in lieu of construction of fractional dwelling units in  
33 accordance with the "Administrative Procedure Act," P.L.1968,  
34 c.410 (C.52:14B-1 et seq.).

35 e. Nothing in this section shall preclude a municipality from  
36 imposing additional inclusionary requirements upon redevelopment  
37 or rehabilitation projects or any form of infill development or  
38 adaptive reuse of a residential development project.

39 f. Half the units reserved for low income or moderate income  
40 housing pursuant to this section shall be reserved for low income  
41 housing and half the units shall be reserved for moderate income  
42 housing. If an odd number of affordable units is being constructed,  
43 rehabilitated or developed pursuant to this section, the higher  
44 number of units may be determined by the municipality.

45  
46 22. (New section) A municipality shall authorize any person  
47 engaging in a residential '[or small residential]<sup>1</sup> development

project to satisfy the set-aside requirements imposed by section 21 of P.L. , c. (C. ) (pending before the Legislature as this bill) through any combination of the following alternate means:

(1) Permitting the required inclusionary units to be newly constructed off-site;

(2) Permitting the required inclusionary units to be provided off-site by rehabilitation of existing substandard units; and

(3) Permitting a developer to pay a fee in lieu of constructing a portion of the inclusionary units into a municipal trust fund for the construction of affordable housing pursuant to section '[28] 29' of P.L. , c. (C. ) (pending before the Legislature as this bill).

23. (New section) A municipality may provide preference for occupancy of the units required to be provided pursuant to section 21 of P.L. , c. (C. ) (pending before the Legislature as this bill), to those households that have at least one member who works in the municipality and to those households that have at least one member who resides in the municipality.

24. (New section) 'a.' A municipality shall acquire State surplus property in the municipality for affordable housing purposes wherever surplus property is available for disposal in exchange for nominal consideration, pursuant to section 1 of P.L.1962, c.220 (C.52:31-1.1) or policies of the State House Commission, or both.

'b. The commission shall determine where there is available State surplus real property in municipalities not determined to be inclusionary pursuant to section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), and shall study the potential of this property, including an estimate of the affordable units that could be developed on the property. The commission shall, within 180 days of the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), complete the determination and study and transmit them to the Legislature.'

25. (New section) a. In any municipality not determined to be an inclusionary municipality by the commission as described in section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), when a proposed residential development project that includes at least one affordable housing unit requires approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) of a subdivision, site plan or conditional use, or a variance, including a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), the planning board shall review the request for a subdivision, site plan or conditional use, or a variance, and the development including an affordable housing unit shall be deemed to be an inherently beneficial use, and the developer shall be required to make only a showing that the

1 variance or other relief can be granted without substantial detriment  
2 to the public good.

3 b. The provisions of this section shall not apply to areas in a  
4 municipality that are not located in a sewer-service area and for  
5 which sewer-service cannot be reasonably extended from a nearby  
6 approved sewer-service area.

7 c. The provisions of this section shall not apply to a  
8 municipality that has adopted an ordinance that reserves, for use as  
9 an inclusionary development as defined in subsection f. of section 4  
10 of P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant,  
11 developable property having reasonable access to sewer service, for  
12 residential use.

13  
14 '26. (New section) a. The developer of a residential  
15 development project, as defined in subsection t. of section 4 of  
16 P.L.1985, c.222 (C.52:27D-304), may apply to the New Jersey  
17 Housing and Mortgage Finance Agency, established pursuant to  
18 section 4 of P.L.1983, c.530 (C.55:14K-4), for an adjustment to the  
19 affordable housing set-aside required by subsection a. of section 21  
20 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
21 if it is believed that a project will not be economically feasible if  
22 required to comply with the requirements of section 21 of P.L. ,  
23 c. (C. ) (pending before the Legislature as this bill), despite the  
24 municipality taking all reasonable actions to make the development  
25 economically feasible. Following an adjustment pursuant to this  
26 section, no less than 10 percent of the housing units in residential  
27 development project shall be occupied by, or reserved for  
28 occupancy by, low or moderate income occupants.

29 b. The application for an adjustment shall contain a pro forma  
30 that includes details of the project plan and financial analysis,  
31 including the yield required for financing and to secure a mortgage,  
32 and an analysis of the burden of applicable development regulations  
33 and ordinances' effect on the project's financial viability.

34 c. The agency shall have 90 days to review the application for  
35 an adjustment to a project's set aside and shall provide, in writing, a  
36 determination containing an evaluation. The agency shall consider  
37 the financing received by the residential development project,  
38 including loans, grants, or other financial aid administered by the  
39 department, including programs administered by the agency, any  
40 assistance received from the New Jersey Affordable Housing Trust  
41 Fund established pursuant to section 20 of P.L.1985, c.222  
42 (C.52:27D-320) or a municipal trust fund established pursuant to  
43 section 29 of P.L. , c. (C. ) (pending before the Legislature as  
44 this bill), and any other source of financial assistance, including by  
45 not limited to assistance received from any other instrumentality of  
46 the State or the United States government. The agency may consult  
47 with any other State agency when conducting its evaluation,

1 including the State Planning Commission. The department  
2 determination shall include a suggested adjustment to the set-aside  
3 for low income or moderate income housing.

4 d. The agency shall transmit its determination, including any  
5 adjustment, to the municipality's board of adjustment and planning  
6 board of the municipality, which shall grant relief necessary to  
7 implement the adjustment to the development's set-aside.

8 e. After the agency issues a determination or recommends an  
9 adjustment, any party may appeal the matter to the Superior Court.

10 f. The agency, in consultation with the State Planning  
11 Commission, and in accordance with the "Administrative Procedure  
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
13 regulations to implement the provisions of this section.<sup>1</sup>  
14

15 <sup>1</sup>[26.] 27.<sup>1</sup> (New section) The Legislature finds and declares:

16 a. In July 2008, the New Jersey Legislature enacted a law  
17 imposing a fee on non-residential development to encourage the  
18 production of opportunities for affordable housing for low- and  
19 moderate-income New Jersey residents.

20 b. Since the adoption of this policy, the State and our nation  
21 have been engulfed in an economic recession that has resulted in  
22 substantial increases in unemployment, including an unemployment  
23 rate of more than nine percent, and substantial decreases in revenue  
24 to the State treasury.

25 c. Revenues actually collected pursuant to the "Statewide Non-  
26 Residential Development Fee Act," sections 32 through 38 of  
27 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), fell far short  
28 of the amounts anticipated before the "New Jersey Economic  
29 Stimulus Act of 2009," P.L.2009, c.90 (C.52:27D-489a et al.)  
30 suspended implementation of the Statewide non-residential  
31 development fee.

32 d. It is undisputable that the charging of fees at high levels  
33 dissuades commerce from locating within a State or municipality or  
34 locality, increases unemployment, and deters non-residential and  
35 residential development, and these ill effects impede the implicit  
36 constitutional requirement that government action provide for the  
37 general welfare of the State's citizens.

38 e. Continued imposition of the development fee will hamper  
39 the State's ability to recover from the economic recession, slowing  
40 job creation and development that normally are a source of revenue,  
41 increasing the revenue shortfall in the State's budget, further  
42 hampering the State's ability to provide for the general welfare  
43 needs of its residents, including, but not limited to, funding  
44 programs for the developmentally disabled, health care services for  
45 senior citizens and indigent families, financial support for special  
46 education services within local school districts, funding for State

1 institutions for the mentally ill, and general financial support for  
2 municipal governments and local school districts.

3 f. The negative impact of a State policy that relies on a  
4 municipal fee structure and of State programs that require a  
5 municipality to impose fees and charges on developers must be  
6 balanced against any public good expected from such regulation.

7 g. It is essential to the public good to repeal the fee imposed  
8 under the "Statewide Non-Residential Development Fee Act,"  
9 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
10 C.40:55D-8.7).

11  
12 '["27."] 28.' (New section) a. Notwithstanding any law, rule, or  
13 regulation to the contrary, no municipality shall adopt an ordinance  
14 imposing a fee upon the developer of non-residential property or  
15 construction to provide for affordable housing.

16 b. Any provision of a local ordinance which imposes a fee for  
17 the development of affordable housing upon a developer of non-  
18 residential property, including any and all development fee  
19 ordinances adopted in accordance with any regulations of the  
20 Council on Affordable Housing, or any provision of an ordinance  
21 which imposes an obligation relating to the provision of housing  
22 affordable to low and moderate income households, or payment in  
23 lieu of construction as a condition of non-residential development,  
24 shall be void and of no effect.

25 c. The provisions of this section shall not apply to a financial  
26 or other contribution that a developer made or committed itself to  
27 make for a non-residential property that received preliminary site  
28 plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-  
29 46), or final approval, pursuant to section 38 of P.L.1975, c.291  
30 (C.40:55D-50) prior to July 17, 2008, or for a non-residential  
31 project that, prior to July 17, 2008, was referred to a planning board  
32 by the State, a governing body, or other public agency for review  
33 pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

34 d. The provisions of this section shall not apply to a financial  
35 or other contribution, including the investment obligations made  
36 pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), that a developer of a  
37 non-residential development regulated under P.L.1977, c.110  
38 (C.5:12-1 et seq.) has made or committed itself to make relating to  
39 the provision of housing affordable to low, moderate, or middle-  
40 income households.

41  
42 '["28."] 29.' (New section) a. A municipality may impose and  
43 collect payments in lieu of construction of affordable housing in  
44 residential development projects, as permitted in section 21 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill)  
46 pursuant to guidelines promulgated by the State Planning  
47 Commission.

- 1       b. A municipality shall deposit all payments collected into a  
2 trust fund dedicated to those purposes as required under this  
3 section. Each amount collected shall be deposited and shall be  
4 accounted for separately, by payer and date of deposit.
- 5       c. (1) A municipality may only spend payments in lieu of  
6 construction for an activity to address the municipality's obligation  
7 to provide its portion of the region's need for affordable housing.
- 8       (2) Municipal payment trust funds shall not be expended to  
9 reimburse municipalities for activities which occurred prior to the  
10 authorization of a municipality to collect payments in lieu of  
11 construction.
- 12       (3) A municipality shall set aside a portion of its payment-in-  
13 lieu fee trust fund for the purpose of providing affordability  
14 assistance to low and moderate income households in affordable  
15 units located in the municipality.
- 16       (a) Affordability assistance programs may include, but are not  
17 limited to, down payment assistance, security deposit assistance,  
18 low interest loans, common maintenance expenses for units located  
19 in condominiums, and rental assistance.
- 20       (b) Affordability assistance to households earning 30 percent or  
21 less of median income may include buying down the cost of low  
22 income units in a municipality to make them affordable to  
23 households earning 30 percent or less of median income.
- 24       (4) A municipality may contract with a private or public entity  
25 to administer any program facilitating housing affordable to low  
26 and moderate income households including the requirement for  
27 affordability assistance, or any program or activity for which the  
28 municipality expends payment-in-lieu proceeds.
- 29       (5) Not more than 20 percent of the revenues collected from  
30 payments in lieu of construction shall be expended on  
31 administration, in accordance with rules of the commission.
- 32       d. Notwithstanding any provision of this section, or regulations  
33 of the commission, a municipality shall not collect a payment-in-  
34 lieu fee from a developer whenever that developer is providing for  
35 the construction of all of the affordable units required pursuant to  
36 section 21 of P.L. , c. (C. ) (pending before the Legislature as  
37 this bill), either on-site or elsewhere within the municipality.
- 38       e. All payment-in-lieu fees collected and deposited in the trust  
39 fund shall be committed for expenditure within four years from the  
40 date of collection. A municipality that fails to commit to expend  
41 the balance required in the payment in lieu trust fund by the time set  
42 forth in this subsection shall be required by the commission to  
43 transfer the remaining unspent balance at the end of the four-year  
44 period to the "New Jersey Affordable Housing Trust Fund,"  
45 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-  
46 320), to be used in the housing region of the transferring  
47 municipality for the authorized purposes of that fund.

1        '[29.] 30.' (New section) If any persons benefitting from a  
 2        housing program established pursuant to P.L. , c. (C. )  
 3        (pending before the Legislature as this bill) that assists persons who  
 4        have experienced, or may experience, the foreclosure and loss of  
 5        their personal residence, or addresses the needs of low and  
 6        moderate income households residing within the municipality, are  
 7        otherwise income qualified to occupy such housing under federal or  
 8        State law, then any affirmative marketing requirements contained in  
 9        regulations promulgated to effectuate the program shall be waived  
 10       to permit the persons to occupy, rent, or purchase new or  
 11       rehabilitated affordable housing units that they may have previously  
 12       occupied or owned.

13  
 14       '[30.] 31.' . (New section) 'a.' A municipality shall not be  
 15       liable for any unmet housing obligation based on regulations  
 16       promulgated by the Council on Affordable Housing pursuant to the  
 17       "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
 18       law or fact in a time period prior to the effective date of P.L. , c.  
 19       (C. ) (pending before the Legislature as this bill).

20       'b. Notwithstanding subsection a. of this section, a municipality  
 21       shall not alter the zoning classification of any inclusionary  
 22       development site that is included in a municipality's master plan as  
 23       an inclusionary development site, or which has received any local,  
 24       county, or State land use or environmental permit or approval, and  
 25       is, by judgment of repose, court order, or settlement in exclusionary  
 26       zoning litigation, designated or reserved for purposes of satisfying a  
 27       municipality's fair share of the region's housing opportunities.'  
 28

29       '[31.] 32.' (New section) a. No exclusionary zoning action  
 30       naming a municipality as a defendant shall be filed for 120 days  
 31       following the effective date of this act.

32       b. Subsection a. of this section shall not apply to a municipality  
 33       subject to a court order to provide affordable housing prior to the  
 34       effective date of P.L. , c. (C. ) (pending before the Legislature  
 35       as this bill).

36       c. For any litigation involving exclusionary zoning instituted  
 37       prior to the effective date of P.L. , c. (C. ) (pending before  
 38       the Legislature as this bill), jurisdiction may remain with the court,  
 39       which shall take judicial notice of the statutory intent stated  
 40       hereunder.

41  
 42       '[32.] 33.' Section 47 of P.L.1975, c.291 (C.40:55D-60) is  
 43       amended to read as follows:

44       47. Whenever the proposed development requires approval  
 45       pursuant to this act of a subdivision, site plan or conditional use,  
 46       but not a variance pursuant to subsection d. of section 57 of this act  
 47       (C. 40:55D-70), the planning board shall have the power to grant to

1 the same extent and subject to the same restrictions as the board of  
2 adjustment:

- 3 a. Variances pursuant to subsection 57 c. of this act;
- 4 b. Direction pursuant to section 25 of this act for issuance of a  
5 permit for a building or structure in the bed of a mapped street or  
6 public drainage way, flood control basin or public area reserved  
7 pursuant to section 23 of this act; and
- 8 c. Direction pursuant to section 27 of this act for issuance of a  
9 permit for a building or structure not related to a street.

10 Whenever relief is requested pursuant to this section, notice of  
11 the hearing on the application for development shall include  
12 reference to the request for a variance or direction for issuance of a  
13 permit, as the case may be.

14 The developer may elect to submit a separate application  
15 requesting approval of the variance or direction of the issuance of a  
16 permit and a subsequent application for any required approval of a  
17 subdivision, site plan or conditional use. The separate approval of  
18 the variance or direction of the issuance of a permit shall be  
19 conditioned upon grant of all required subsequent approvals by the  
20 planning board. No such subsequent approval shall be granted  
21 unless the approval can be granted without substantial detriment to  
22 the public good and without substantial impairment of the intent  
23 and purpose of the zone plan and zoning ordinance.

24 If, pursuant to section 25 of P.L. , c. (C. ) (pending before  
25 the Legislature as this bill), a proposed development containing one  
26 or more affordable housing units requires approval to subsection d.  
27 of section 57 of P.L.1975, c.291 (C.40:55D-70), the planning board  
28 shall have the authority to review the request for relief.  
29 (cf: P.L.1984, c.20, s.10)

30  
31 '1[33.] 34.' Section 57 of P.L.1975, c.291 (C.40:55D-70) is  
32 amended to read as follows:

33 57. Powers. The board of adjustment shall have the power to:

- 34 a. Hear and decide appeals where it is alleged by the appellant  
35 that there is error in any order, requirement, decision or refusal  
36 made by an administrative officer based on or made in the  
37 enforcement of the zoning ordinance;
- 38 b. Hear and decide requests for interpretation of the zoning  
39 map or ordinance or for decisions upon other special questions upon  
40 which such board is authorized to pass by any zoning or official  
41 map ordinance, in accordance with this act;
- 42 c. (1) Where: (a) by reason of exceptional narrowness,  
43 shallowness or shape of a specific piece of property, or (b) by  
44 reason of exceptional topographic conditions or physical features  
45 uniquely affecting a specific piece of property, or (c) by reason of  
46 an extraordinary and exceptional situation uniquely affecting a  
47 specific piece of property or the structures lawfully existing



1 thereon, the strict application of any regulation pursuant to article 8  
2 of **【this act】** P.L.1975, c.291 would result in peculiar and  
3 exceptional practical difficulties to, or exceptional and undue  
4 hardship upon, the developer of such property, grant, upon an  
5 application or an appeal relating to such property, a variance from  
6 such strict application of such regulation so as to relieve such  
7 difficulties or hardship; (2) where in an application or appeal  
8 relating to a specific piece of property the purposes of this act or the  
9 purposes of the "Educational Facilities Construction and Financing  
10 Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a  
11 deviation from the zoning ordinance requirements and the benefits  
12 of the deviation would substantially outweigh any detriment, grant a  
13 variance to allow departure from regulations pursuant to article 8 of  
14 **【this act】** P.L.1975, c.291; provided, however, that the fact that a  
15 proposed use is an inherently beneficial use shall not be dispositive  
16 of a decision on a variance under this subsection and provided that  
17 no variance from those departures enumerated in subsection d. of  
18 this section shall be granted under this subsection; and provided  
19 further that the proposed development does not require approval by  
20 the planning board of a subdivision, site plan or conditional use, in  
21 conjunction with which the planning board has power to review a  
22 request for a variance pursuant to subsection a. of section 47 of  
23 **【this act】** P.L.1975, c.291; and  
24 d. In particular cases for special reasons, grant a variance to  
25 allow departure from regulations pursuant to article 8 of **【this act】**  
26 P.L.1975, c.291 to permit:  
27 (1) a use or principal structure in a district restricted against  
28 such use or principal structure**【,】** ;  
29 (2) an expansion of a nonconforming use**【,】** ;  
30 (3) deviation from a specification or standard pursuant to  
31 section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a  
32 conditional use**【,】** ;  
33 (4) an increase in the permitted floor area ratio as defined in  
34 section 3.1 of P.L.1975, c.291 (C.40:55D-4) **【,】** ;  
35 (5) an increase in the permitted density as defined in section 3.1  
36 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required  
37 lot area for a lot or lots for detached one or two dwelling unit  
38 buildings, which lot or lots are either an isolated undersized lot or  
39 lots resulting from a minor subdivision; or  
40 (6) a height of a principal structure which exceeds by 10 feet or  
41 10% the maximum height permitted in the district for a principal  
42 structure. A variance under this subsection shall be granted only by  
43 affirmative vote of at least five members, in the case of a municipal  
44 board, or two-thirds of the full authorized membership, in the case  
45 of a regional board, pursuant to article 10 of **【this act】** P.L.1975,  
46 c.291.

1 If an application development requests one or more variances but  
2 not a variance for a purpose enumerated in subsection d. of this  
3 section, the decision on the requested variance or variances shall be  
4 rendered under subsection c. of this section.

5 No variance or other relief may be granted under the terms of  
6 this section, including a variance or other relief involving an  
7 inherently beneficial use, without a showing that such variance or  
8 other relief can be granted without substantial detriment to the  
9 public good and will not substantially impair the intent and the  
10 purpose of the zone plan and zoning ordinance.

11 With respect to variances requested for the development of  
12 affordable housing pursuant to this subsection, a municipality that  
13 has been deemed inclusionary pursuant to section 20 of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill), shall not be  
15 required to review those variance requests under inherently  
16 beneficial use tests, and a denial of a variance under such  
17 circumstances shall be presumptively valid.

18 e. In respect to any airport safety zones delineated under the  
19 "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et  
20 seq.), no variance or other relief may be granted under the terms of  
21 this section, permitting the creation or establishment of a  
22 nonconforming use which would be prohibited under standards  
23 promulgated pursuant to that act, except upon issuance of a permit  
24 by the Commissioner of Transportation. An application under this  
25 section may be referred to any appropriate person or agency for its  
26 report; provided that such reference shall not extend the period of  
27 time within which the zoning board of adjustment shall act.

28 (cf: P.L.2007, c.137, s.60)

29

30 <sup>1</sup>[34.] <sup>1</sup>35. The following sections are repealed:

- 31 Section 32 of P.L.2008, c.46 (C.40:55D-8.1);
- 32 Section 33 of P.L.2008, c.46 (C.40:55D-8.2);
- 33 Section 34 of P.L.2008, c.46 (C.40:55D-8.3);
- 34 Section 35 of P.L.2008, c.46 (C.40:55D-8.4);
- 35 Section 36 of P.L.2008, c.46 (C.40:55D-8.5);
- 36 Section 37 of P.L.2008, c.46 (C.40:55D-8.6);
- 37 Section 38 of P.L.2008, c.46 (C.40:55D-8.7);
- 38 Section 39 of P.L.2009, c.90 (C.40:55D-8.8);
- 39 Section 5 of P.L.1985 c.222 (C.52:27D-305);
- 40 Section 6 of P.L.1985, c.222 (C.52:27D-306);
- 41 Section 7 of P.L.1985, c.222 (C.52:27D-307);
- 42 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
- 43 Section 8 of P.L.1985, c.222 (C.52:27D-308);
- 44 Section 9 of P.L.1985, c.222 (C.52:27D-309);
- 45 Section 10 of P.L.1985, c.222 (C.52:27D-310);
- 46 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
- 47 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);

1 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);  
2 Section 13 of P.L.1985 c.222 (C.52:27D-313);  
3 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
4 Section 14 of P.L.1985 c.222 (C.52:27D-314);  
5 Section 15 of P.L.1985 c.222 (C.52:27D-315);  
6 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
7 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
8 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
9 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
10 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);  
11 Section 8 of P.L.2008, c.46 (C.52:27D-329.2);  
12 'Section 9 of P.L.2008, c.46 (C.52:27D-329.3);'  
13 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);  
14 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and  
15 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).  
16  
17 '[35.] 36.'<sup>1</sup> This act shall take effect immediately.

WITHDRAWN