ASSEMBLY, No. 2029



STATE OF NEW JERSEY

217th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Extends time municipalities have to commit fees and payments-in-lieu of constructing affordable units to six years.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee with technical review.



An Act concerning affordable housing development fees and payments-in-lieu of constructing affordable units and amending P.L.1985, c.222 and P.L.2008, c.46.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1985, c.22 (C.52:27D-304) is amended to read as follows:

4. As used in this act:

a. "Council" means the Council on Affordable Housing established **[**in this act**]** by section 5 of P.L.1985, c.222 (C.52:27D-305), which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

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

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

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

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

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

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

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

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

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

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

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

n. “Eligible county” means any county that has established or establishes at any time subsequent to the effective date of P.L. , c.    (C. ) (pending before the Legislature as this bill) a “County Homelessness Trust Fund” pursuant to section 5 of P.L.2009, c.123 (C.52:27D-287e), or that serves as an “urban county” pursuant to section 102(a)(6) of the “Housing and Community Development Act of 1974,” Pub.L.93-383 (42 U.S.C. s.5302(a)(6)) for the purposes of undertaking community development and housing assistance activities.

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

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

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

A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the council's approval of the expenditure. The council shall promulgate regulations regarding the establishment, administration and enforcement of the expenditure of affordable housing development fees by municipalities. The council shall have exclusive jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the council may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

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

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

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

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

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, common maintenance expenses for units located in condominiums, rental assistance, and any other program authorized by the council. (b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low income units in a municipal fair share plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall not entitle a municipality to bonus credits except as may be provided by the rules of the council.

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

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

d. The council shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees shall be committed for expenditure within **[**four**]** six years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this section shall be required by the council to transfer the remaining unspent balance at the end of the **[**four-year**]** six-year period to its county government if its county is an eligible county, and otherwise to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund. Any eligible county receiving funds under this subsection shall deposit all funds collected into a trust fund dedicated to those purposes, and accounted for separately from any other revenue collected by the county, as is required of municipalities under this section, shall adopt written procedures and funding guidelines by which qualified applicants may apply to use such funds to build, rehabilitate or preserve housing for low and moderate income households, and shall expeditiously distribute those funds to qualified applicants.

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

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

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

3. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to read as follows:

9. a. The council may authorize a municipality that has petitioned for substantive certification to impose and collect payments-in-lieu of constructing affordable units on site upon the construction of residential development, which payments may be imposed and collected as provided pursuant to the rules of the council. Payment-in-lieu fees shall be deposited into a trust fund, and accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu is charged by a municipality pursuant to this subsection, a development fee authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) shall not be charged in connection with the same development.

b. A municipality shall commit to expend collections from payments-in-lieu imposed pursuant to subsection a. of this section within **[**four**]** six years of the date of collection. The council may extend this deadline if the municipality submits sufficient proof of building or other permits, or other efforts concerning land acquisition or project development. The council shall provide such administrative assistance as may be required to aid in the construction of affordable housing units. A municipality that fails to commit to expend the amounts collected pursuant to this section within the timeframes established shall be required to transfer any unexpended revenue collected pursuant to subsection a. of this section to its county government if its county is an eligible county, and otherwise to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within the same housing region for the authorized purposes of that fund, in accordance with regulations promulgated by the council. Any eligible county receiving funds under this subsection shall deposit all funds collected into a trust fund dedicated to those purposes, and accounted for separately from any other revenue collected by the county, as is required of municipalities under this section, shall adopt written procedures and funding guidelines by which qualified applicants may apply to use such funds to build, rehabilitate or preserve housing for low and moderate income households, and shall expeditiously distribute those funds to qualified applicants.

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

4. This act shall take effect immediately.