# ASSEMBLY, No. 404

# STATE OF NEW JERSEY

## 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**
**Assemblyman EDWARD H. THOMSON**
**District 30 (Monmouth and Ocean)**

**SYNOPSIS**

Establishes "Subcommittee on Affordable Housing Needs" within "Joint Committee on Housing Affordability"; requires subcommittee to make determinations concerning affordable housing needs.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.

**AN ACT** establishing the "Subcommittee on Affordable Housing Needs" within the "Joint Committee on Housing Affordability," supplementing Title 52 of the Revised Statutes, and amending various parts of statutory law.

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

1. (New section) a. There is established a Subcommittee on Affordable Housing Needs within the Joint Committee on Housing Affordability to evaluate and determine the present and prospective need for affordable housing at the State and regional levels and to implement the means for fulfilling that need.

b. The subcommittee shall consist of five voting members, as follows: the chairman of the joint committee, who shall serve ex officio; two members of the Senate appointed by the chairman of the joint committee, who shall not be of the same political party; and two members of the General Assembly appointed by the chairman of the joint committee, who shall not be of the same political party. The membership shall be balanced to the greatest extent possible among the various housing regions of the State.

c. The subcommittee shall consist of the following nonvoting members, appointed by the chairman of the joint committee, as follows:

(1) three elected officials representing the interests of local government, including one member who represents a municipality having a population in excess of 40,000 persons and a population density in excess of 3,000 persons per square mile, one member who represents a municipality having a population of 40,000 persons or less and a population density of 3,000 persons per square mile or less, and one member who represents the interests of county government;

(2) two members representing the interests of households in need of low and moderate housing, including one member who represents the interests of the nonprofit builders of low and moderate income housing and who shall have an expertise in land use practices and housing issues, and one member who represents the interests of persons with disabilities and who shall have an expertise in the construction of accessible housing for persons with disabilities;

(3) one member representing the interests of the for-profit builders of market rate homes, who shall have an expertise in land use practices and housing issues;

(4) one faculty member of an accredited college or university in the State, who shall have an expertise in urban planning, land use practices, and housing issues; and

**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.**

(5) any other members, as may be deemed appropriate by the chairman, who shall have an expertise in land use practices, housing issues, or any other related field.

d. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties to the extent that funds are made available for that purpose.

2. (New section) a. The subcommittee shall organize as soon as practical after the appointment of its members. The chairman of the joint committee shall serve as the chairperson of the subcommittee. The chairperson of the subcommittee shall select a secretary who need not be a member of the subcommittee.

b. The subcommittee shall meet at the call of its chairperson and in the places it may deem appropriate and necessary to fulfill its duties. The subcommittee may conduct public hearings at any place the chairperson of the subcommittee shall designate.

c. The subcommittee shall be entitled to call to its assistance and avail itself of the services of the Office of Local Planning Services in the Department of Community Affairs, as it may require.

d. The presence of three voting members shall constitute a quorum for the transaction of business. The subcommittee may conduct routine business without a quorum, but may only vote on official matters when a quorum is present.

3. (New section) The subcommittee shall evaluate and determine the present and prospective need for affordable housing at the State and regional levels and implement the means for fulfilling that need. Specifically, the subcommittee shall:

a. identify and evaluate possible methods for determining and adjusting the housing regions of the State in an order such that the municipalities located within each region exhibit significant social, economic, and income similarities;

b. identify and evaluate possible methods for determining the present and prospective need for low and moderate income housing at the State and regional levels, for each 10-year period, in a manner that accounts for the following considerations:

(1) the population growth within each housing region;

(2) the job growth within each housing region;

(3) the capacity of the existing infrastructure within each housing region to support additional housing units;

(4) the amount of land located within each housing region that is preserved as open space, used for agricultural purposes, and located in environmentally sensitive areas; and

(5) the impact of the construction of additional housing units on the natural environment of each housing region;

c. determine and adjust, as necessary, the following:

(1) the housing regions of the State; and

(2) the present and prospective need for low and moderate income housing at the State and regional level, for each 10-year period, provided that the method used to calculate these needs shall account for the additional considerations set forth in subsection b. of this section; and

d. determine and implement the means for fulfilling the present and prospective need for low and moderate income housing at the State and regional level, including but not limited to, encouraging the rehabilitation of the existing housing units located within each housing region.

4. (New section) The subcommittee shall prepare and submit a report of its findings and determinations to the joint committee, Governor, and Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), not later than six months after the organization of the subcommittee and every 10 years thereafter.

5. Section 4 of P.L.2007, c.55 (C.52:9RR-4) is amended to read as follows:

4. a. The committee is authorized, empowered, and directed to conduct a continuing study of the availability and provision of housing affordable to all New Jersey households, the financing and administration of programs providing affordable housing, the rules, regulations or actions promulgated or enforced by various State government entities, including but not limited to, departments, boards, bureaus, commissions, or agencies, that may negatively impact the affordability of housing, and land use policies and other issues related to making housing affordable, for the purpose of making recommendations for legislative action, including amendments to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), or to any other statute as it deems practicable and desirable for the provision of opportunities for the affordability and availability of housing for all residents throughout the State.

b. The Subcommittee on Affordable Housing Needs established pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill) is authorized, empowered, and directed to perform the duties set forth in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2007, c.55, s.4)

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

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

thereafter] until the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), to:

a. Determine housing regions of the State;

b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;

c. Adopt criteria and guidelines for:

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

Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record;

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

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

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

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

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

(d) Adequate open space would not be provided,

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

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

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

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

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

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share of housing units affordable to households with a gross household income of less than 80% of the median gross household income beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective

fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

The council, with respect to any municipality seeking substantive certification, shall require that a minimum percentage of housing units in any residential development resulting from a zoning change made to a previously non-residentially-zoned property, where the change in zoning precedes or follows the application for residential development by no more than 24 months, be reserved for occupancy by low or moderate income households, which percentage shall be determined by the council based on economic feasibility with consideration for the proposed density of development.

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

No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions 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.) shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the requirements set forth thereunder.
(cf: P.L.2008, c.46, s.6)

7. This act shall take effect immediately.

STATEMENT

This bill establishes a “Subcommittee on Affordable Housing Needs” within the “Joint Committee on Housing Affordability” to evaluate and determine the need for affordable housing at the State

and regional levels. The subcommittee would also determine and implement the means for fulfilling this need.

The subcommittee is to consist of five voting members, as follows: the chairman of the joint committee; two members of the Senate appointed by the chairman of the joint committee, who shall not be of the same political party; and two members of the General Assembly appointed by the chairman of the joint committee, who shall not be of the same political party. The subcommittee also is to consist of the following nonvoting members, appointed by the chairman of the Joint Committee, as follows:

(1) three elected officials representing the interests of local government, including representatives of one urban municipality, one rural municipality, and one county;

(2) two members representing the interests of households in need of low and moderate housing, including one representative of the nonprofit builders of low and moderate income housing and one representative of the interests of persons with disabilities;

(3) one member representing the interests of the for-profit builders of market rate homes;

(4) one faculty member of a university in the State, who specializes in urban planning, land use practices, and housing issues; and

(5) any other members, as may be deemed appropriate by the chairman.

The subcommittee is to be responsible for evaluating and determining the present and prospective need for affordable housing at the State and regional levels. Specifically, the subcommittee would:

(1) identify and evaluate possible methods for determining the housing regions of the State;

(2) evaluate and estimate the present and prospective need for low and moderate income housing at the State and regional levels;

(3) determine and adjust, as necessary, the housing regions of the State and the present and prospective need for low and moderate income housing for each 10-year period based on population growth; job growth; the capacity of existing infrastructure to support additional housing units; the amount of land that is preserved for open space land, used for agricultural purposes, and located in environmentally sensitive areas; and the environmental impact of constructing additional housing units; and

(4) determine and implement the means for fulfilling the State and regional need for affordable housing, including but not limited to, encouraging the rehabilitation of existing housing units.

Under current law, the Council on Affordable Housing (COAH) is deemed responsible for establishing the housing regions of the State, determining the needs for affordable housing throughout the State, and issuing guidance concerning municipal compliance with the need for affordable housing. Reflecting the transfer of

responsibilities from COAH to the subcommittee, the bill also dissolves the responsibility of COAH to provide these functions upon the effective date of the bill.