

ASSEMBLY, No. 2017

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman N.Munoz

SYNOPSIS

Reforms procedures concerning provision of affordable housing; repeals “Statewide Non-Residential Development Fee Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning affordable housing and amending,
2 supplementing, 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 Council on Affordable Housing
8 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
9 301 et al.) is abolished, and all of its powers, functions, and duties
10 that are not repealed by P.L. , c. (C.) (pending before the
11 Legislature as this bill) are continued in the Department of
12 Community Affairs established pursuant to section 1 of P.L.1966,
13 c.293 (C.52:27D-1), except as herein otherwise provided.
14 Whenever, in any law, rule, regulation, order, contract, document,
15 judicial or administrative proceeding, or otherwise, reference is
16 made to the Council on Affordable Housing, the same shall mean
17 and refer to the Department of Community Affairs. All
18 appropriations and other moneys available, and to become
19 available, to the Council on Affordable Housing are hereby
20 continued in the Department of Community Affairs, and shall be
21 available for the objects and purposes for which such moneys are
22 appropriated, subject to any terms, restriction, limitations, or other
23 requirements imposed by State or federal law.

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

26

27 2. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
28 read as follows:

29 3.1. "Days" means calendar days.

30 "Density" means the permitted number of dwelling units per
31 gross area of land that is the subject of an application for
32 development, including noncontiguous land, if authorized by
33 municipal ordinance or by a planned development.

34 "Developer" means the legal or beneficial owner or owners of a
35 lot or of any land proposed to be included in a proposed
36 development, including the holder of an option or contract to
37 purchase, or other person having an enforceable proprietary interest
38 in such land.

39 "Development" means the division of a parcel of land into two or
40 more parcels, the construction, reconstruction, conversion,
41 structural alteration, relocation or enlargement of any building or
42 other structure, or of any mining excavation or landfill, and any use
43 or change in the use of any building or other structure, or land or
44 extension of use of land, for which permission may be required
45 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

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.

1 "Development potential" means the maximum number of
2 dwelling units or square feet of nonresidential floor area that may
3 be constructed on a specified lot or in a specified zone under the
4 master plan and land use regulations in effect on the date of the
5 adoption of the development transfer ordinance or on the date of the
6 adoption of the ordinance authorizing noncontiguous cluster, and in
7 accordance with recognized environmental constraints.

8 "Development regulation" means a zoning ordinance,
9 subdivision ordinance, site plan ordinance, official map ordinance
10 or other municipal regulation of the use and development of land, or
11 amendment thereto adopted and filed pursuant to P.L.1975, c.291
12 (C.40:55D-1 et seq.).

13 "Development restriction" means an agricultural restriction, a
14 conservation restriction, or a historic preservation restriction.

15 "Development transfer" or "development potential transfer"
16 means the conveyance of development potential, or the permission
17 for development, from one or more lots to one or more other lots by
18 deed, easement, or other means as authorized by ordinance.

19 "Development transfer bank" means a development transfer bank
20 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
21 or the State TDR Bank.

22 "Drainage" means the removal of surface water or groundwater
23 from land by drains, grading or other means and includes control of
24 runoff during and after construction or development to minimize
25 erosion and sedimentation, to assure the adequacy of existing and
26 proposed culverts and bridges, to induce water recharge into the
27 ground where practical, to lessen nonpoint pollution, to maintain
28 the integrity of stream channels for their biological functions as
29 well as for drainage, and the means necessary for water supply
30 preservation or prevention or alleviation of flooding.

31 "Environmental commission" means a municipal advisory body
32 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

33 "Erosion" means the detachment and movement of soil or rock
34 fragments by water, wind, ice and gravity.

35 "Final approval" means the official action of the planning board
36 taken on a preliminarily approved major subdivision or site plan,
37 after all conditions, engineering plans and other requirements have
38 been completed or fulfilled and the required improvements have
39 been installed or guarantees properly posted for their completion, or
40 approval conditioned upon the posting of such guarantees.

41 "Floor area ratio" means the sum of the area of all floors of
42 buildings or structures compared to the total area of land that is the
43 subject of an application for development, including noncontiguous
44 land, if authorized by municipal ordinance or by a planned
45 development.

46 "General development plan" means a comprehensive plan for the
47 development of a planned development, as provided in section 4 of
48 P.L.1987, c.129 (C.40:55D-45.2).

1 "Governing body" means the chief legislative body of the
2 municipality. In municipalities having a board of public works,
3 "governing body" means such board.

4 "Historic district" means one or more historic sites and
5 intervening or surrounding property significantly affecting or
6 affected by the quality and character of the historic site or sites.

7 "Historic preservation restriction" means a "historic preservation
8 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

9 "Historic site" means any real property, man-made structure,
10 natural object or configuration or any portion or group of the
11 foregoing of historical, archeological, cultural, scenic or
12 architectural significance.

13 "Inherently beneficial use" means a use which is universally
14 considered of value to the community because it fundamentally
15 serves the public good and promotes the general welfare. Such a
16 use includes, but is not limited to **[,]** :

17 (1) a hospital, school, child care center, or group home **[, or]** ;

18 (2) a wind, solar or photovoltaic energy facility or structure; or

19 (3) a residential development project, proposed pursuant to
20 section 20 of P.L. , c. (C.) (pending before the Legislature
21 as this bill) in a municipality not determined to be inclusionary, in
22 which at least 10 percent of the dwelling units are set aside for low-
23 or moderate-income households.

24 "Instrument" means the easement, credit, or other deed
25 restriction used to record a development transfer.

26 "Interested party" means: (a) in a criminal or quasi-criminal
27 proceeding, any citizen of the State of New Jersey; and (b) in the
28 case of a civil proceeding in any court or in an administrative
29 proceeding before a municipal agency, any person, whether residing
30 within or without the municipality, whose right to use, acquire, or
31 enjoy property is or may be affected by any action taken under
32 P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,
33 acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et
34 seq.), or under any other law of this State or of the United States
35 have been denied, violated or infringed by an action or a failure to
36 act under P.L.1975, c.291 (C.40:55D-1 et seq.).

37 "Land" includes improvements and fixtures on, above or below
38 the surface.

39 "Local utility" means any sewerage authority created pursuant to
40 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
41 seq.); any utilities authority created pursuant to the "municipal and
42 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
43 seq.); or any utility, authority, commission, special district or other
44 corporate entity not regulated by the Board of Regulatory
45 Commissioners under Title 48 of the Revised Statutes that provides
46 gas, electricity, heat, power, water or sewer service to a
47 municipality or the residents thereof.

1 "Lot" means a designated parcel, tract or area of land established
2 by a plat or otherwise, as permitted by law and to be used,
3 developed or built upon as a unit.

4 (cf: P.L.2013, c.106, s.3)

5

6 3. Section 9 of P.L.1966, c.293 (C.52:27D-9) is amended to
7 read as follows:

8 9. The department shall, in addition to other powers and duties
9 invested in it by this act, or by any other law:

10 (a) Assist in the coordination of State and Federal activities
11 relating to local government;

12 (b) Advise and inform the Governor on the affairs and problems
13 of local government and make recommendations to the Governor
14 for proposed legislation pertaining thereto;

15 (c) Encourage cooperative action by local governments,
16 including joint service agreements, regional compacts and other
17 forms of regional cooperation;

18 (d) Assist local government in the solution of its problems, to
19 strengthen local self-government;

20 (e) Study the entire field of local government in New Jersey;

21 (f) Collect, collate, publish and disseminate information
22 necessary for the effective operation of the department and useful to
23 local government;

24 (g) Maintain an inventory of data and information and act as a
25 clearing house and referral agency for information on State and
26 Federal services and programs;

27 (h) Stimulate local programs through publicity, education,
28 guidance and technical assistance concerning Federal and State
29 programs;

30 (i) Convene meetings of municipal, county or other local
31 officials to discuss ways of cooperating to provide service more
32 efficiently and economically;

33 (j) Maintain and make available on request a list of persons
34 qualified to mediate or arbitrate disputes between local units of
35 government arising from joint service projects or other cooperative
36 activities, and further to prescribe rates of compensation for all such
37 mediation, factfinding or arbitration services; **[and]**

38 (k) Post on the department's website the annual budget and three
39 immediately preceding adopted budgets of any municipality or
40 county that does not maintain its own website pursuant to the
41 requirements of N.J.S.40A:4-10; and

42 (l) Assume the duties of the Council on Affordable Housing
43 that are not repealed by section 25 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) and that are transferred
45 to the department pursuant to sections 1 and 14 of P.L. ,
46 c. (C.).

47 (cf: P.L.2011, c.7, s.2)

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

3 4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

4 a. "Council" means the Council on Affordable Housing
5 established **in P.L.1985, c.222 (C.52:27D-301 et al.),** which shall
6 have primary jurisdiction for the administration of housing
7 obligations in accordance with sound regional planning
8 considerations in this State **by section 5 of P.L.1985, c.222**
9 **(C.52:27D-305; repealed by section 25 of P.L. ,c. (pending**
10 **before Legislature as this bill) and , pursuant to section 1 of P.L. ,**
11 **c. (C.) (pending before the Legislature as this bill), the**
12 **Department of Community Affairs.**

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

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

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

35 e. **["Resolution of participation" means a resolution adopted by**
36 **a municipality in which the municipality chooses to prepare a fair**
37 **share plan and housing element in accordance with P.L.1985, c.222**
38 **(C.52:27D-301 et al.)]. Deleted by amendment, P.L. , c.)**
39 **(pending before the Legislature as this bill).**

40 f. "Inclusionary development" means a market rate residential
41 housing development **in which a substantial percentage of the**
42 **housing units are provided for a reasonable income range of** that
43 includes units set-aside as housing affordable to low and moderate
44 income households.

45 g. "Conversion" means the conversion of existing commercial,
46 industrial, or residential structures for low and moderate income
47 housing purposes where a substantial percentage of the housing

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

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

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

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

19 k. " Person with a disability" means a person with a physical
20 disability, infirmity, malformation, or disfigurement which is
21 caused by bodily injury, birth defect, aging, or illness including
22 epilepsy and other seizure disorders, and which shall include, but
23 not be limited to, any degree of paralysis, amputation, lack of
24 physical coordination, blindness or visual impairment, deafness or
25 hearing impairment, the inability to speak or a speech impairment,
26 or physical reliance on a service animal, wheelchair, or other
27 remedial appliance or device.

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

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

41 n. "Price restricted unit" means a residential dwelling unit that
42 is price restricted, including: units that are deed restricted for
43 occupancy by residents of low or moderate income; price restricted
44 pursuant to covenants established for units financed by federal Low
45 Income Housing Tax Credits; price restricted pursuant to covenants
46 established for units developed pursuant to the "Neighborhood
47 Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-
48 490 et seq.); units rehabilitated as either a sending or receiving

1 municipality under a regional contribution agreement, and subject
2 to price controls; units built or rehabilitated as part of a Community
3 Development Block Grant, and subject to price controls; housing
4 units operated by a public housing authority; units constructed,
5 rehabilitated, or receiving project-based assistance under the
6 program authorized pursuant to section 8 of the United States
7 Housing Act of 1937 (42 U.S.C. s.1437f); or units constructed, in
8 whole or in part, with other governmental funding sources.

9 o. "Developable land" means undeveloped property with
10 sufficient sewer capacity, having a slope of less than 15 percent,
11 that is not property owned by a municipality or county and
12 designated by resolution or ordinance as preserved open space, or as
13 recreation, conservation, farmland or historic preservation lands,
14 pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.), and located where
15 development is not prohibited pursuant to the "Freshwater Wetlands
16 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Pinelands
17 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the "Coastal
18 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the
19 "Highlands Water Protection and Planning Act," P.L.2004,
20 c.120, (C.13:20-1 et al.), the Federal Clean Water Act, (33 U.S.C.
21 ss.1251 through 1376), the "Hackensack Meadowlands Reclamation
22 and Development Act," P.L.1968, c.404 (C.13:17-1 et seq.), or any
23 other development restriction designated by the Commissioner of
24 Community Affairs.

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

31 q. "Special needs unit" means, at a minimum, a bedroom
32 contained within a unit of special needs housing for one or more
33 occupants that contains a bed for each occupant and access to a
34 bathroom.

35 r. "Inclusionary municipality" means a municipality deemed,
36 pursuant to sections 15 and 16 of P.L. , c. (C.) (pending
37 before the Legislature as this bill), to have provided or planned for a
38 variety and choice of housing as evidenced by the quantity of price-
39 restricted units or amount of other units, the characteristics of which
40 demonstrate an opportunity for low or moderate income housing.

41 s. "Residential development project" means new construction
42 resulting in the production of five or more residential dwelling
43 units, whether attached or detached.

44 t. "Small residential development project" means new
45 construction resulting in the production of fewer than five
46 residential dwelling units, whether attached or detached, and shall
47 not mean any construction or reconstruction of: (1) a single-family
48 dwelling that is occupied, or intended to be occupied, by the owner;

1 or (2) a two-family dwelling, in which one unit is occupied, or
2 intended to be occupied, by the owner.

3 u. "Single-family attached housing" means two or more
4 dwelling units sharing a wall that extends from ground to roof with
5 an adjoining unit, with no other units above or below, with separate
6 major utility systems and metering.

7 v. "Sufficient sewer capacity" means the ability to treat and
8 dispose of all sewage generated from a site by means of public or
9 private, off-site or on-site facilities that are consistent with the area-
10 wide water quality management plan, including the wastewater
11 management plan, or with an amendment to the area-wide water
12 quality management plan submitted to and under review by the
13 Department of Environmental Protection, as applicable.

14 w. "Luxury dwelling" means a residential housing unit that,
15 according to federal Department of Housing and Urban
16 Development or other recognized standards for home ownership
17 and rental costs, is affordable to, and occupied or intended for
18 occupancy by, households with a gross household income equal to
19 or greater than 150 percent of the median gross household income
20 for households of the same size within the housing region in which
21 the housing is located.

22 x. "Elder cottage housing opportunity unit" means a modular,
23 self-contained unit, restricted to individuals aged 55 years or older
24 or people with disabilities, or both, and erected on a site containing
25 an existing dwelling.

26 y. "Prospective residential growth" means all housing units that
27 are issued certificates of occupancy after the effective date of
28 P.L. , c. (C.) (pending before the Legislature as this bill).
29 This term does not include units in a development that has been
30 granted preliminary final approval prior to the effective date of
31 P.L. , c. (C.) (pending before the Legislature as this bill).
32 To the extent that a municipality has no net growth in the total
33 number of housing units, this term does not include units that only
34 replace existing housing units.

35 (cf: P.L.2017, c.131, s.199)

36
37 5. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended
38 to read as follows:

39 1. As used in **[this act]** P.L.1991, c.479 (C.52:27D-307.1 et
40 seq.):

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

45 "Commissioner" means the Commissioner of Community
46 Affairs.

47 "Council" means the Council on Affordable Housing created by
48 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,

1 pursuant to section 1 of P.L. , c. (C.) (pending before the
2 Legislature as this bill), the Department of Community Affairs.

3 "Department" means the Department of Community Affairs.

4 "Housing region" means a housing region as determined by the
5 **【Council on Affordable Housing】** Department of Community
6 Affairs pursuant to subsection a. of section 【7 of P.L.1985, c.222
7 (C.52:27D-307)】 14 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 "Project" or "housing project" means any specific work or
10 undertaking for the purpose of providing housing accommodations,
11 whether by new construction or by rehabilitation or adaptation of
12 existing structures, that shall be affordable to persons and families
13 of low or moderate income within the meaning of the "Fair Housing
14 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or
15 undertaking may include the acquisition, construction or
16 rehabilitation of lands, buildings and improvements, and such
17 stores, offices, and social, recreational, communal or other facilities
18 as may be incidental or appurtenant to the housing accommodations
19 that are to be provided.

20 "Register" means the Register of Housing Projects directed by
21 section 2 of **【this act】** P.L.1991, c.479 (C.52:27D-307.2) to be
22 established and maintained by the commissioner.

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

24

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

27 3. a. The commissioner shall cause to be developed a system
28 for assigning and designating priority ratings to each project
29 included in the register. Priority ratings shall be based upon the
30 following factors, giving to each factor such weight as the
31 commissioner shall judge to be appropriate:

32 (1) Feasibility. Each project shall be evaluated for its physical
33 and financial feasibility, giving consideration to the capabilities of
34 the proposed sponsor or developer, market conditions and
35 regulatory requirements in the locality for which it is proposed, and
36 the availability of financing in sufficient amount and at reasonable
37 cost.

38 (2) Desirability. Each project shall be evaluated with relation to
39 its probable effect in meeting the affordable housing needs of the
40 housing region in which it is to be located, in accordance with the
41 standards and criteria of the **【council】** department. Consideration
42 shall be given to (a) the number of affordable dwelling units that the
43 project would provide, (b) the proportion of affordable units to the
44 total number of units envisaged in the project plan, (c) the
45 distribution of those affordable units as between those affordable to
46 persons and families of low income and those of moderate income,
47 considered in relation to the needs of the housing region, (d)
48 appropriateness of the proposed tenure of the affordable units,

1 whether to be rental or owner-occupied, in relation to the needs of
2 the housing region, and (e) appropriateness of the proposed
3 distribution of units as to family size, in relation to the needs of the
4 housing region.

5 (3) Efficiency. Each project shall be evaluated on the basis of
6 the cost to the State, in terms of financial assistance granted or
7 revenue forgone in order to further the project, for each affordable
8 dwelling unit judged by the commissioner to be feasible and
9 desirable according to the terms of the proposal or application made
10 for such assistance.

11 b. In developing the system of assigning and designating
12 priorities, and in evaluating individual projects for such assignment
13 and designation in the register, the commissioner shall consult with
14 the executive director of the agency **【and the executive director of**
15 **the council】**. The **【council】** person having control over the project
16 and the agency shall promptly and fully supply the commissioner
17 with all relevant information necessary for the commissioner's
18 timely and complete fulfillment of the requirements of **【this act】**
19 P.L.1991, c.479 (C.52:27D-307.1 et seq.).
20 (cf: P.L.1991, c.479, s.3)

21
22 7. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended
23 to read as follows:

24 4. a. Any officer or employee of the department, including any
25 member, officer or employee of the agency **【or the council】**, who
26 receives from any person any solicitation, application, proposal or
27 communication of any kind, whether oral or in writing, aimed at
28 furthering the assistance of any project shall promptly report the
29 same to the commissioner. The report shall identify the person or
30 persons making such communication. If any such person is not
31 identified in the register in accordance with the requirements of
32 subsection b. of section 2 of **【this act】** P.L.1991, c.479 (C.52:27D-
33 307.2), the report shall state the person's relationship to the sponsor
34 or developer of the project and the capacity in which the person
35 represents himself or herself to be acting on behalf of the sponsor or
36 developer; or if the person fails or refuses to supply that
37 information, the report shall so state.

38 b. The commissioner shall develop a procedure or procedures
39 by which reports required under subsection a. of this section shall
40 be made either to the commissioner directly or through such
41 administrative channels as the commissioner shall devise and direct.
42 Notwithstanding the provisions of subsection i. of section 4 of
43 P.L.1983, c.530 (C.55:14K-4) **【and subsection a. of section 5 of**
44 **P.L.1985, c.222 (C.52:27D-305)】**, the regulations adopted by the
45 commissioner in fulfillment of this subsection shall be of full force
46 and application on and within the agency **【and the council】**; and all
47 members, officers and employees of the agency **【and council】** shall

1 give full compliance with and obedience to the rules and orders of
2 the commissioner made in pursuance of his duties and
3 responsibilities under **【this act】** P.L.1991, c.479 (C.52:27D-307.1 et
4 seq.).

5 c. Reports made to the commissioner shall be promptly
6 forwarded by him, not later than 10 days after their receipt, to the
7 Governor and to the presiding officers of the Houses of the
8 Legislature, who shall cause all members of their respective Houses
9 to be notified of the receipt of those reports and shall make
10 adequate provision for the inspection of the commissioner's reports
11 by members and committees of either House, and for the
12 dissemination of those reports to the public. The reports forwarded
13 by the commissioner shall in each instance indicate the priority
14 rating that has been assigned in the register to the project to which
15 the report relates.

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

17

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

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

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

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

41 (3) Determination of measures that the municipality will take to
42 assure that low and moderate income units remain affordable to low
43 and moderate income households for an appropriate period of not
44 less than six years;

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

- 1 (5) Donation or use of municipally owned land or land
2 condemned by the municipality for purposes of providing low and
3 moderate income housing;
- 4 (6) Tax abatements for purposes of providing low and moderate
5 income housing;
- 6 (7) Utilization of funds obtained from any State or federal
7 subsidy toward the construction of low and moderate income
8 housing;
- 9 (8) Utilization of municipally generated funds toward the
10 construction of low and moderate income housing; and
- 11 (9) The purchase of privately owned real property used for
12 residential purposes at the value of all liens secured by the property,
13 excluding any tax liens, notwithstanding that the total amount of
14 debt secured by liens exceeds the appraised value of the property,
15 pursuant to regulations promulgated by the Commissioner of
16 Community Affairs pursuant to subsection b. of section 41 of
17 P.L.2000, c.126 (C.52:27D-311.2). 【Deleted by amendment,
18 P.L. , c.) (pending before the Legislature as this bill)
- 19 b. 【The municipality may provide for a phasing schedule for
20 the achievement of its fair share of low and moderate income
21 housing.】 (Deleted by amendment, P.L. , c.) (pending before
22 the Legislature as this bill)
- 23 c. (Deleted by amendment, P.L.2008, c.46)
- 24 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 shall require a municipality to raise or expend municipal revenues
27 in order to provide low and moderate income housing.
- 28 e. 【When a municipality's housing element includes the
29 provision of rental housing units in a community residence for the
30 developmentally disabled, as defined in section 2 of P.L.1977,
31 c.448 (C.30:11B-2), which will be affordable to persons of low and
32 moderate income, and for which adequate measures to retain such
33 affordability pursuant to paragraph (3) of subsection a. of this
34 section are included in the housing element, those housing units
35 shall be fully credited as permitted under the rules of the council
36 towards the fulfillment of the municipality's fair share of low and
37 moderate income housing.】 (Deleted by amendment, P.L. , c.)
38 (pending before the Legislature as this bill)
- 39 f. 【It having been determined by the Legislature that the
40 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
41 a public purpose, a municipality or municipalities may utilize public
42 monies to make donations, grants or loans of public funds for the
43 rehabilitation of deficient housing units and the provision of new or
44 substantially rehabilitated housing for low and moderate income
45 persons, providing that any private advantage is incidental.】
46 (Deleted by amendment, P.L. , c.) (pending before the
47 Legislature as this bill)

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

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

14 i. **【The council, upon the application of a municipality and a**
15 **developer, may approve reduced affordable housing set-asides or**
16 **increased densities to ensure the economic feasibility of an**
17 **inclusionary development.】** (Deleted by amendment, P.L. , c.)
18 (pending before the Legislature as this bill)

19 j. A municipality may enter into an agreement with a
20 developer or residential development owner to provide a preference
21 for affordable housing to low to moderate income veterans who
22 served in time of war or other emergency, as defined in section 1 of
23 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable
24 units in that particular project. This preference shall be established
25 in the applicant selection process for available affordable units so
26 that applicants who are veterans who served in time of war or other
27 emergency, as referenced in this subsection, and who apply within
28 90 days of the initial marketing period shall receive preference for
29 the rental of the agreed-upon percentage of affordable units. After
30 the first 90 days of the initial 120-day marketing period, if any of
31 those units subject to the preference remain available, then
32 applicants from the general public shall be considered for
33 occupancy. Following the initial 120-day marketing period,
34 previously qualified applicants and future qualified applicants who
35 are veterans who served in time of war or other emergency, as
36 referenced in this subsection, shall be placed on a special waiting
37 list as well as the general waiting list. The veterans on the special
38 waiting list shall be given preference for affordable units, as the
39 units become available, whenever the percentage of preference-
40 occupied units falls below the agreed upon percentage. Any
41 agreement to provide affordable housing preferences for veterans
42 pursuant to this subsection shall not affect a municipality's ability to
43 receive credit for the unit from the council, or its successor.

44 (cf: P.L.2013, c.6, s.1)

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

1 1. Beginning upon the effective date of P.L.2005, c.350
2 (C.52:27D-311a et al.), and in order to be considered a price
3 restricted unit for purposes of a determination pursuant to
4 subsection a. of section 16 of P.L. , c. (C.) (pending before
5 the Legislature as this bill), any new construction **【for which credit**
6 **is sought against a fair share obligation】** shall be adaptable in
7 accordance with the provisions of section 5 of P.L.2005, c.350
8 (C.52:27D-123.15). For the purposes of P.L.2005, c.350
9 (C.52:27D-311a et al.), "new construction" shall mean an entirely
10 new improvement not previously occupied or used for any purpose.
11 (cf: P.L.2005, c.350, s.1)

12

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

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

33 (cf: P.L.2005, c.350, s.6)

34

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

37 20. There is established in the Department of Community
38 Affairs a separate trust fund, to be used for the exclusive purposes
39 as provided in this section, and which shall be known as the "New
40 Jersey Affordable Housing Trust Fund." The fund shall be a non-
41 lapsing, revolving trust fund, and all monies deposited or received
42 for purposes of the fund shall be accounted for separately, by source
43 and amount, and remain in the fund until appropriated for such
44 purposes. The fund shall be the repository of all State funds
45 appropriated for affordable housing purposes, including, but not
46 limited to, the proceeds from the receipts of the additional fee
47 collected pursuant to paragraph (2) of subsection a. of section 3 of

1 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
2 Statewide non-residential development fees collected pursuant to
3 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
4 reverting from municipal development trust funds, or other monies
5 as may be dedicated, earmarked, or appropriated by the Legislature
6 for the purposes of the fund. All references in any law, order, rule,
7 regulation, contract, loan, document, or otherwise, to the
8 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
9 mean the "New Jersey Affordable Housing Trust Fund." Not less
10 than 13 percent of the total expenditures in any State fiscal year
11 from the New Jersey Affordable Housing Trust Funds shall be used
12 for housing projects and programs reserved for very low income
13 households. The department shall be permitted to utilize annually
14 up to 7.5 percent of the monies available in the fund for the
15 payment of any necessary administrative costs related to the
16 administration of the "Fair Housing Act," P.L.1985, c.222
17 (C.52:27D-301 et al.), or any costs related to administration of
18 P.L.2008, c.46 (C.52:27D-329.1 et al.) or P.L.____, c.____ (C.____)
19 (pending before the Legislature as this bill).

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

31 **【Of those monies deposited into the "New Jersey Affordable**
32 **Housing Trust Fund" that are derived from municipal development**
33 **fee trust funds, or from available collections of Statewide non-**
34 **residential development fees, a priority for funding shall be**
35 **established for projects in municipalities that have petitioned the**
36 **council for substantive certification.】** The commissioner shall
37 prioritize funding for projects that include special needs units when
38 making grants and awards from the "New Jersey Affordable
39 Housing Trust Fund."

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

43 b. The commissioner shall establish rules and regulations
44 governing the qualifications of applicants, the application
45 procedures, and the criteria for awarding grants and loans and the
46 standards for establishing the amount, terms, and conditions of each
47 grant or loan.

1 c. For any period which the council may approve, the
2 commissioner may assist affordable housing programs which are
3 not located in municipalities whose housing elements have been
4 granted substantive certification or which are not in furtherance of a
5 regional contribution agreement; provided that the affordable
6 housing program will meet all or part of a municipal low and
7 moderate income housing obligation.

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

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

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

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

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

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

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

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

46 e. Any grant or loan agreement entered into pursuant to this
47 section shall incorporate contractual guarantees and procedures by
48 which the division will ensure that any unit of housing provided for

1 low and moderate income households shall continue to be occupied
2 by low and moderate income households for at least 20 years
3 following the award of the loan or grant, except that the division
4 may approve a guarantee for a period of less than 20 years where
5 necessary to ensure project feasibility.

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

22 g. In addition to other grants or loans awarded pursuant to this
23 section, and without regard to any limitations on such grants or
24 loans for any other purposes herein imposed, the commissioner
25 shall annually allocate such amounts as may be necessary in the
26 commissioner's discretion, and in accordance with section 3 of
27 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
28 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
29 287.1 et al.). Such rental assistance grants shall be deemed
30 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
31 301 et al.), in order to meet the housing needs of certain low income
32 households who may not be eligible to occupy other housing
33 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

34 h. The department and the State Treasurer shall submit the
35 "New Jersey Affordable Housing Trust Fund" for an audit annually
36 by the State Auditor or State Comptroller, at the discretion of the
37 Treasurer. In addition, the department shall prepare an annual
38 report for each fiscal year, and submit it by November 30th of each
39 year to the Governor and the Legislature, and the Joint Committee
40 on Housing Affordability, or its successor, and post the information
41 to its web site, of all activity of the fund, including details of the
42 grants and loans by number of units, number and income ranges of
43 recipients of grants or loans, location of the housing renovated or
44 constructed using monies from the fund, the number of units upon
45 which affordability controls were placed, and the length of those
46 controls. The report also shall include details pertaining to those
47 monies allocated from the fund for use by the State rental assistance

1 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
2 and subsection g. of this section.

3 i. The commissioner may award or grant the amount of any
4 appropriation deposited in the "New Jersey Affordable Housing
5 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
6 320.1) to municipalities pursuant to the provisions of section 39 of
7 P.L.2009, c.90 (C.40:55D-8.8).
8 (cf: P.L.2017, c.131, s.200)
9

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

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

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

30 (2) The commissioner shall target the award of any grant or loan
31 to municipalities based on the extent that their housing plan relied
32 on housing projects or programs funded in part or in whole by
33 municipal development trust fund revenues.
34 (cf: P.L.2009, c.90, s.41)
35

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

38 18. a. **【Notwithstanding any rules of the council to the contrary,**
39 **for developments consisting of newly-constructed residential units**
40 **located, or to be located, within the jurisdiction of any regional**
41 **planning entity required to adopt a master plan or comprehensive**
42 **management plan pursuant to statutory law, including the New**
43 **Jersey Meadowlands Commission pursuant to subsection (i) of**
44 **section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission**
45 **pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,**
46 **c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization**
47 **Planning Authority pursuant to section 5 of P.L.2006, c.16**

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

9 b. Subject to the provisions of subsection d. of this section, a
10 developer of a project consisting of newly-constructed residential
11 units being financed in whole or in part with State funds, including,
12 but not limited to, transit villages designated by the Department of
13 Transportation and units constructed on State-owned property, shall
14 be required to reserve at least ~~【20】~~ 10 percent of the residential
15 units constructed for occupancy by low or moderate income
16 households, as those terms are defined in section 4 of P.L.1985,
17 c.222 (C.52:27D-304), with affordability controls as required under
18 the rules of the ~~【council】~~ department, unless the municipality in
19 which the property is located has received ~~【substantive certification~~
20 ~~from the council and such a reservation is not required under the~~
21 ~~approved affordable housing plan, or the municipality has been~~
22 ~~given】~~ a judgment of repose or a judgment of compliance by the
23 court, and such a reservation is not required under the approved
24 affordable housing plan or the municipality has received substantive
25 certification from the council or has petitioned for substantive
26 certification prior to the effective date of P.L. , c. (C.)
27 (pending before the Legislature as this bill) and such petition has
28 not been dismissed or otherwise determined to be invalid. A
29 municipality may satisfy the set-aside requirements imposed by this
30 subsection through any combination of the alternate means provided
31 for in section 18 of P.L. , c. (C.) (pending before the
32 Legislature as this bill).

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

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

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

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

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

30 d. Notwithstanding the provisions of subsection b. of this
31 section, or any other law or regulation to the contrary, for purposes
32 of mixed use projects or qualified residential projects in which a
33 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-
34 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90
35 (C.34:1B-209.3), or both, an "eligible municipality," as defined in
36 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of
37 deciding the percentage of newly-constructed residential units
38 within the project, up to **【20】** 10 percent of the total, required to be
39 reserved for occupancy by low or moderate income households.
40 For a mixed use project or a qualified residential project that has
41 received preliminary or final site plan approval prior to the effective
42 date of P.L.2011, c.89, the percentage shall be deemed to be the
43 percentage, if any, of units required to be reserved for low or
44 moderate income households in accordance with the terms and
45 conditions of such approval.

46 (cf: P.L.2011, c.89, s.5)

1 14. (New section) a. It shall be the duty of the Department of
2 Community Affairs to administer the "Fair Housing Act," P.L.1985,
3 c.222 (C.52:27D-301 et al.) and to assist municipalities that are
4 developing toward fulfilling their obligation to provide an
5 appropriate variety and choice of housing, including housing for
6 low- and moderate-income families. The department shall:

7 (1) Determine the housing regions of the State, for the use and
8 information of municipalities;

9 (2) Promulgate guidelines and criteria for housing elements
10 prepared pursuant to section 19 of the "Municipal Land Use Law,"
11 P.L.1975, c.291 (C.40:55D-28);

12 (3) Pursuant to subsection a. of section 16 of P.L. , c.
13 (C.) (pending before the Legislature as this bill), make a
14 determination of whether a municipality is an inclusionary
15 municipality;

16 (4) Establish guidelines or model language for covenants or
17 other devices to maintain the affordability of inclusionary units
18 developed pursuant to sections 17 and 18 of P.L. , c. (C.)
19 (pending before the Legislature as this bill);

20 (5) Establish affirmative marketing requirements for those
21 inclusionary units developed pursuant to section 18 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill); and

23 (6) Review and grant approval or disapprove any petition for
24 substantive certification filed prior to the effective date of P.L. ,
25 c. (C.) (pending before the Legislature as this bill). The
26 department shall apply the regulations of the Council on Affordable
27 Housing set forth in N.J.A.C.5:92 and N.J.A.C.5:93, and such
28 provisions set forth in N.J.A.C.5:96 and N.J.A.C.5:97 as have been
29 upheld by the Supreme Court, or may adopt new regulations, or
30 revisions or amendments to the existing regulations, concerning
31 petitions for substantive certification. The department shall conduct
32 an interim review of the housing plan of any municipality granted
33 substantive certification. This paragraph shall not be construed to
34 impair a municipality's ability to withdraw a petition for
35 substantive certification, at any time, and apply instead for a
36 determination of inclusionary status pursuant to section 15 of
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38 (7) Promulgate guidelines for development fees in lieu of
39 construction of fractional dwelling units.

40 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
41 c.410 (C.52:14B-1 et seq.), the department may promulgate any
42 rules and regulations necessary to effectuate the purposes of this
43 section, or may adopt new regulations, or revisions or amendment
44 to existing regulations, concerning petitions for substantive
45 certification, and any such regulations, revision, or amendment
46 shall be effective upon filing with the Office of Administrative
47 Law.

1 15. (New section) a. Following the effective date of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), a
3 municipality may apply to the Department of Community Affairs
4 for a determination of whether the municipality is an inclusionary
5 municipality that shall be deemed to have provided for its portion of
6 the region's opportunity for low and moderate income housing.

7 b. (1) A municipality that has not met the criteria in section 16
8 of P.L. , c. (C.) (pending before the Legislature as this bill)
9 may reapply to the department at any time during the 10-year
10 planning cycle, based upon additional evidence that those criteria
11 have been satisfied.

12

13 16. (New section) a. The Department of Community Affairs
14 shall determine that a municipality is an inclusionary municipality
15 if:

16 (1) at least seven and one-half percent of the total present
17 occupied housing stock within the municipality is comprised of
18 price restricted units;

19 (2) at least 33 percent of the occupied housing stock within the
20 municipality is comprised of the following types of housing:

21 (a) single-family attached housing as defined in subsection u. of
22 section 4 of P.L.1985, c.222 (C.52:27D-304);

23 (b) mobile homes located in a mobile home park as defined in
24 subsection d. of section 3 of P.L.1983, c.386 (C.40:55D-102);

25 (c) multiple dwellings as defined pursuant to subsection k. of
26 section 3 of P.L.1967, c.76 (C.55:13A-3); and

27 (d) other housing units that are affordable to low-and moderate-
28 income households; or

29 (3) the municipal zoning ordinance and master plan housing
30 element contain:

31 (a) an analysis of the municipality's current housing stock;

32 (b) a plan pertaining to how the municipality will satisfy the
33 obligation pursuant to section 17 of P.L. , c. (C.) (pending
34 before the Legislature as this bill), which may incorporate alternate
35 approaches pursuant to section 18 of P.L. , c. (C.) (pending
36 before the Legislature as this bill);

37 (c) an inventory of the municipality's existing low and moderate
38 income housing stock; and

39 (d) a plan providing for any municipal action, including
40 rehabilitation, necessary to address the needs of a municipality's
41 low- and moderate-income households residing in dilapidated or
42 unsuitable housing.

43 b. (1) In making a determination regarding a municipality's
44 inclusionary status pursuant to subsection a. of this section, the
45 department shall allow a housing unit to qualify for additional credit
46 if the unit satisfies one of the following criteria:

47 (a) twice as much weight as its actual proportion to a
48 municipality's total housing stock if the unit qualifies as a special

1 needs housing unit, and has been newly constructed following the
2 effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill);

4 (b) 1.5 times as much weight as its actual proportion to a
5 municipality's total housing stock if the unit is price restricted, and
6 the department finds that the unit or the price restriction on the unit,
7 or both, were established prior to the effective date of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) in order to
9 address the municipality's affordable housing obligation; or

10 (c) twice as much weight as its actual proportion to a
11 municipality's total housing stock if a price restriction on the unit
12 makes it qualify as very low income housing.

13 (2) In making a determination regarding a municipality's
14 inclusionary status pursuant to paragraph (2) of subsection a. of this
15 section, the department shall give a price restricted unit 1.5 times as
16 much weight as its actual proportion to a municipality's total
17 housing stock, regardless of whether the department finds that the
18 unit or the price restriction on the unit, or both, were established
19 prior to the effective date of P.L. , c. (C.) (pending before
20 the Legislature as this bill) in order to address the municipality's
21 affordable housing obligation. Such additional credit may only be
22 applied as an alternative to any additional credit applied under
23 paragraph (1) of this subsection. The department may exclude units
24 determined to be luxury dwellings from inclusionary status
25 determinations pursuant to paragraph (2) of subsection a. of this
26 section.

27 (3) Upon filing a zoning ordinance and master plan housing
28 element with the department pursuant to paragraph (3) of subsection
29 a. of this section, the filing shall be deemed to satisfy the criteria in
30 this section. In the event of a challenge to this filing, the
31 Commissioner of Community Affairs will undertake a limited
32 review of the municipality's filing, for the sole purpose of
33 determining whether the filing meets the criteria of paragraph (3) of
34 subsection a. of this section.

35 c. For a unit constructed following the effective date of
36 P.L.2005, c.350 (C.52:27D-311a et al.) to be considered price
37 restricted for purposes of a determination pursuant to this section,
38 the unit shall be adaptable as described in section 5 of P.L.2005,
39 c.350 (C.52:27D-123.15) and section 1 of P.L.2005, c.350
40 (C.52:27D-311a).

41 d. A municipality that received substantive certification under
42 N.J.A.C.5:96 and N.J.A.C.5:97, being the rules of the Council on
43 Affordable Housing for the period beginning June 2, 2008, or that
44 has been granted a judgment of repose or a judgment of compliance
45 prior to the effective date of P.L. , c. (C.) (pending before
46 the Legislature as this bill), shall be considered an inclusionary
47 municipality pursuant to this section until the end of its approved

1 certification period; provided that the municipality continues to
2 fully and faithfully implement the provisions of its fair share plan.

3 e. The department shall determine whether a municipality is an
4 inclusionary municipality within 90 days of the receipt of an
5 application. A determination of whether a municipality is
6 inclusionary pursuant to paragraph (1) or (2) of subsection a. of this
7 section shall be based upon a municipality's existing housing stock.
8 Units transferred through a regional contribution agreement shall be
9 fully credited to the sending municipality for purposes of
10 determining whether a municipality is an inclusionary municipality.

11 f. A determination by the department pursuant to this section
12 shall be deemed a final agency action appealable to the Appellate
13 Division of the Superior Court.

14

15 17. (New section) a. (1) For any new residential
16 development project, as defined in subsection s. of section 4 of
17 P.L.1985, c.222 (C.52:27D-304), and any redevelopment,
18 rehabilitation, infill development, or adaptive reuse of a residential
19 development project that would qualify as a residential development
20 project if it were new construction, a municipality that is addressing
21 affordable housing obligations pursuant to paragraph (3) of
22 subsection a. of section 16 of P.L. , c. (C.) (pending before
23 the Legislature as this bill) shall require by ordinance that at least
24 one out of every 10 residential housing units proposed as part of
25 that project be reserved for occupancy as low or moderate income
26 housing.

27 (2) For any new small residential development project, as
28 defined in subsection t. of section 4 of P.L.1985, c.222 (C.52:27D-
29 304), and any redevelopment, rehabilitation, infill development, or
30 adaptive reuse of a development project that would qualify as a
31 residential or small residential development project if it was new
32 construction, a municipality may require the developer to pay a
33 development fee in lieu of reserving units for low and moderate
34 income households. Each amount collected shall be deposited into
35 the municipal affordable housing trust fund, and accounted for
36 separately from all other funding held by the municipality, or into
37 the "New Jersey Affordable Housing Trust Fund," established
38 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Nothing
39 in this paragraph shall be construed to require the developer of a
40 small residential development project to pay a development fee
41 when the developer is providing for the on-site or off-site
42 construction of affordable units.

43 b. When land use or other local government approvals are
44 required, a municipality shall make a reasonable effort to facilitate
45 the economic viability of an inclusionary development developed
46 pursuant to the requirements of this section.

47 c. If a zoning board of adjustment determines that an inclusionary
48 development is not economically viable, then the zoning board of

1 adjustment may require the developer to provide the affordable units
2 utilizing one or more of the alternate methods authorized pursuant to
3 section 18 of P.L. , c. (C.) (pending before the Legislature
4 as this bill).

5 d. Nothing in this section shall preclude a municipality from
6 imposing additional inclusionary requirements upon redevelopment
7 or rehabilitation projects or any form of infill development or
8 adaptive reuse of a residential development project.

9 e. At least 50 percent of the units reserved for low or moderate
10 income housing pursuant to this section shall be reserved for low
11 income housing. If an odd number of affordable units is being
12 constructed, rehabilitated, or developed pursuant to this section, the
13 municipality may determine the reservation-use of the odd unit. If a
14 residential development project results in a fractional unit reserved
15 for occupancy by low-income or moderate-income households, then
16 the developer shall collect a development fee, and deposit the fee
17 into the municipal affordable housing trust fund, to be accounted
18 for separately from all other funding held by the municipality, or
19 into the "New Jersey Affordable Housing Trust Fund," established
20 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

21 f. At least 50 percent of the units reserved for low or moderate
22 income housing pursuant to this section shall be self-contained
23 residential dwelling units with a kitchen, sanitary facilities, sleeping
24 quarters, and a private entrance, and which are available to the
25 general public and not restricted to any specific segment of the
26 population.

27 g. A municipality that has received Third Round substantive
28 certification from the Council on Affordable Housing or the
29 Department of Community Affairs, or has been granted a judgment
30 of repose or a judgment of compliance prior to the effective date of
31 P.L. , c. (C.) (pending before the Legislature as this bill),
32 shall be exempt from the requirements of this section for the
33 duration of the housing round for which the municipality is
34 certified, unless the department determines that the municipality's
35 Third Round housing element and fair share plan does not provide
36 for a realistic opportunity for the municipality to achieve its fair
37 share of low and moderate income housing.

38 h. A municipality that has petitioned for Third Round
39 substantive certification prior to the effective date of P.L. ,
40 c. (C.) (pending before the Legislature as this bill), but whose
41 petition was never finally determined by the Council on Affordable
42 Housing or the department, may withdraw its petition for
43 substantive certification or act to withdraw its certification and elect
44 to comply with the requirements of P.L. , c. (C.) (pending
45 before the Legislature as this bill) by satisfying the requirements of
46 this section. This section shall not be construed to apply to a
47 municipality whose petition for substantive certification is
48 dismissed or otherwise determined to be invalid.

1 18. (New section) a. A municipality may authorize the
2 following alternate means to satisfy the set-aside requirements
3 imposed by section 17 of P.L. , c. (C.) (pending before the
4 Legislature as this bill):

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

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

9 (3) In accordance with subsection c. of this section, permitting a
10 developer to pay a development fee into the municipal affordable
11 housing trust fund, or into the “New Jersey Affordable Housing
12 Trust Fund,” established pursuant to section 20 of P.L.1985, c.222
13 (C.52:27D-320) to address affordable housing needs;

14 (4) Requiring a developer to construct or contribute to the
15 construction of a 100 percent affordable development;

16 (5) Permitting construction of elder cottage housing opportunity
17 units;

18 (6) Permitting the construction of off-site accessory apartment
19 units affordable to low- and moderate-income households;

20 (7) Permitting the purchase and subsidization of units that are
21 subsequently sold or rented to low- and moderate-income
22 households at affordable sale prices or rents;

23 (8) Requiring a developer to construct or contribute to the
24 construction of an assisted living residence in which all or a
25 designated number of units are restricted to low- or moderate-
26 income households;

27 (9) Permitting the construction of off-site special needs housing;

28 (10) Allowing very low income housing and special needs
29 housing units to apply twice as much weight against a set-aside
30 requirement as other affordable units, regardless of whether
31 constructed on- or off-site; and

32 (11) Other innovative means to provide for a variety and choice
33 of housing opportunities for low and moderate income residents, so
34 long as the municipality is able to demonstrate a source of funding
35 for any such alternative approach.

36 b. Any person engaging in a residential development project
37 shall file an application to the zoning board of adjustment for
38 approval of alternate means of satisfying the set-aside requirements
39 imposed by section 17 of P.L. , c. (C.) (pending before the
40 Legislature as this bill). In the case of an application, the board of
41 adjustment shall limit its determination to approving and
42 determining which, and to what extent alternate means may be
43 employed, and shall include the reasons for its determination in the
44 findings of its decision thereon.

45 c. For the purposes of paragraph (3) of subsection a. of this
46 section, a development fee may substitute for one or more units of
47 affordable housing, so long as the amount of the fee per substituted
48 unit equates to the average cost of providing one tenant-based State

1 rental assistance subsidy, pursuant to P.L.2004, c.140 (C.52:27D-
2 287.1 et al.), multiplied by 20, in the municipality's housing region,
3 in accordance with the council's rules and regulations.

4 d. For purposes of this section, "rehabilitation" means the
5 repair, renovation, alteration, or reconstruction of a building or
6 structure containing a dwelling space, pursuant to the rehabilitation
7 subcode adopted by the Commissioner of Community Affairs
8 pursuant to section 5 of the "State Uniform Construction Code Act,"
9 P.L.1975, c.217 (C.52:27D-123), that includes the rehabilitation of
10 a major system and a minimum average investment for hard costs of
11 \$10,000 per unit. The Department of Community Affairs shall
12 develop standards for minimum documentation for qualifying
13 rehabilitation.

14

15 19. (New section) A municipality may provide a preference for
16 occupancy of up to one-half of the units required to be provided
17 pursuant to section 17 of P.L. , c. (C.) (pending before the
18 Legislature as this bill), to those households that have at least one
19 member who works in the municipality.

20

21 20. (New section) a. After the expiration of 365 days from the
22 effective date of P.L. , c. (C.) (pending before the
23 Legislature as this bill), in any municipality not determined to be an
24 inclusionary municipality by the Department of Community Affairs
25 as described in section 16 of P.L. , c. (C.) (pending before
26 the Legislature as this bill), when a proposed residential
27 development project in which at least 10 percent of the dwelling
28 units are set aside for low or moderate-income households requires
29 approval pursuant to the "Municipal Land Use Law," P.L.1975,
30 c.291 (C.40:55D-1 et seq.) of a subdivision, site plan, conditional
31 use, or a variance, including a variance pursuant to subsection d. of
32 section 57 of P.L.1975, c.291 (C.40:55D-70), the local land use
33 board shall, pursuant to section 47 of P.L.1975, c.291 (C.40:55D-
34 60), or section 57 of P.L.1975, c.291 (C.40:55D-70), as the case
35 may be, review the request for a subdivision, site plan, conditional
36 use, or a variance, and the proposed residential development project
37 shall be deemed to be an inherently beneficial use, and the
38 developer shall be required to make only a showing that the
39 variance or other relief requested can be granted without substantial
40 detriment to the public good.

41 b. The provisions of this section shall only apply to a
42 municipality's vacant, developable property.

43

44 21. (New section) If any persons benefitting from a housing
45 program established pursuant to P.L. , c. (C.) (pending
46 before the Legislature as this bill) that assists persons who have
47 experienced, or may experience, the foreclosure and loss of their
48 personal residence, or addresses the needs of low- and moderate-

1 income households residing within the municipality, are otherwise
2 income-qualified to occupy such housing under federal or State law,
3 then any affirmative marketing requirements contained in
4 regulations promulgated to effectuate the program shall be waived
5 to permit those persons to occupy, rent, or purchase new or
6 rehabilitated affordable housing units that they may have previously
7 occupied or owned.

8

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

15 b. Notwithstanding subsection a. of this section, a municipality
16 shall not alter the zoning classification of any inclusionary
17 development site, or take any action to remove affordability
18 controls on existing affordable units, until the end of the applicable
19 control period.

20 c. Subsection b. of this section shall not apply to any property
21 that is the subject of pending exclusionary litigation that has not
22 reached final judgment through and including all appeals, including
23 an appeal to the Supreme Court of New Jersey prior to the effective
24 date of P.L. , c. (C.) (pending before the Legislature as this
25 bill).

26

27 23. (New section) a. No exclusionary zoning action naming a
28 municipality as a defendant shall be filed for 365 days following the
29 effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

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

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

40

41 24. (New section) The provisions of P.L. , c. (C.)
42 (pending before the Legislature as this bill) shall be severable, and
43 if any of its provisions shall be held to be unconstitutional, the
44 decision of the court shall not affect the validity of the remaining
45 provisions of P.L. , c. (C.) (pending before the Legislature
46 as this bill).

- 1 (1) at least 7.5 percent of its total present housing stock is
2 price-restricted;
 - 3 (2) at least one-third of its housing stock can be categorized as
4 either single-family attached, mobile homes, multiple
5 dwellings, or other housing units that are affordable to low
6 and moderate income households; or
 - 7 (3) the municipality adopts zoning ordinances or incorporates
8 new standards into its master plan that contain an analysis
9 of existing housing stock, and an affordable housing plan,
10 consisting of 10 percent set-aside requirements for certain
11 new residential developments, or alternative requirements.
- 12 For municipalities that choose to address their affordable
13 housing obligation through a 10 percent set-aside requirement, the
14 bill enables those municipalities to address that obligation through
15 alternate means, consisting of:
- 16 (1) permitting inclusionary units to be newly constructed off-
17 site;
 - 18 (2) permitting the required inclusionary units to be provided
19 off-site by rehabilitation of existing substandard units;
 - 20 (3) permitting a developer to pay a fee into the municipal or
21 State affordable housing trust fund, equating to the current
22 average cost of providing one tenant-based State rental
23 assistance subsidy in the same housing region, multiplied
24 by twenty years, in lieu of each inclusionary unit that
25 would otherwise be required;
 - 26 (4) requiring a developer to construct or contribute to the
27 construction of a 100 percent affordable development;
 - 28 (5) permitting construction of elder cottage housing
29 opportunity units;
 - 30 (6) permitting the construction of off-site accessory apartment
31 units affordable to low- and moderate-income households;
 - 32 (7) permitting the purchase and subsidization of units that are
33 subsequently sold or rented to low- and moderate-income
34 households at affordable sale prices or rents;
 - 35 (8) requiring a developer to construct or contribute to the
36 construction of an assisted living residence in which all or
37 a designated number of units are restricted to low- or
38 moderate-income households;
 - 39 (9) permitting the construction of off-site special needs
40 housing;
 - 41 (10) allowing very low income housing and special needs
42 housing units to apply twice as much weight against a set-
43 aside requirement as other affordable units; and
 - 44 (11) other innovative means to provide for a variety and choice
45 of housing opportunities for low and moderate income
46 residents, so long as the municipality is able to demonstrate
47 a source of funding.

1 In municipalities that have not obtained inclusionary status,
2 proposed developments that satisfy the 10 percent set-aside
3 requirement may be deemed inherently beneficial for the purposes
4 of obtaining a zoning variance.

5 Under the bill, municipalities that received substantive
6 certification or the equivalent under prior COAH rules will be
7 considered inclusionary until the end of their approved certification
8 periods. The bill also permits units already transferred through
9 regional contribution agreements ("RCAs") to be credited to the
10 sending municipality for the purposes of determining inclusionary
11 status.

12 Finally, this bill repeals the "Statewide Non-Residential
13 Development Fee Act". This fee has been charged by all
14 municipalities for non-residential construction or improvements, at a
15 rate of two and one-half percent of the equalized assessed value of
16 land and improvements for all new non-residential construction on
17 unimproved lots. The fee also has been charged at a rate of two and
18 one-half percent of the increase in equalized assessed value for
19 additions to existing structures to be used for non-residential purposes.