

**ASSEMBLY, No. 3584**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MARCH 10, 2022

**Sponsored by:**

**Assemblywoman BRITNEE N. TIMBERLAKE**

**District 34 (Essex and Passaic)**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Concerns development and use of accessory dwelling units.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/17/2022)

1 AN ACT concerning accessory dwelling units, supplementing  
2 P.L.1975, c.291 (C.40:55D-1 et seq.) and P.L.1993, c.30  
3 (C.45:22A-43 et seq.), and amending P.L.1985, c.222.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) a. The Legislature finds and declares that:

9 (1) Accessory dwelling units are a valuable form of housing and  
10 present a way to expand the State's housing supply that is both cost-  
11 effective and consistent with sound planning and environmental  
12 principles.

13 (2) Accessory dwelling units provide housing for family  
14 members, the elderly, in-home health care providers, individuals  
15 with disabilities, households of low and moderate income, and  
16 others, often at below-market prices within existing neighborhoods.

17 (3) Homeowners who develop accessory dwelling units can  
18 benefit from added income and an increased sense of security.

19 (4) Allowing accessory dwelling units in single-family and two-  
20 family residential zones will make it possible to expand the state of  
21 New Jersey's rental housing stock, and meet current and future  
22 housing demand.

23 (5) Accessory dwelling units offer lower-cost housing within  
24 existing neighborhoods while maintaining the architectural  
25 character of a neighborhood.

26 (6) Accessory dwelling units should therefore be considered an  
27 essential component of New Jersey's housing supply.

28 b. It is the intent of the Legislature that municipal land use  
29 regulations shall provide for the creation of accessory dwelling  
30 units consistent with the provisions of P.L. , c. (C. )  
31 (pending before the Legislature as this bill), and that no provision  
32 of any such regulation shall restrict the ability of a property owner  
33 to develop accessory dwelling units consistent with the provisions  
34 of P.L. , c. (C. ) (pending before the Legislature as this  
35 bill).  
36

37 2. (New section) As used in sections 1 through 7 of P.L. ,  
38 c. (C. through C. ) (pending before the Legislature as this  
39 bill):

40 "Accessory dwelling unit" means a residential dwelling unit that  
41 provides complete independent living facilities for one or more  
42 persons, including provisions for living, sleeping, eating, cooking,  
43 and sanitation, and is located within a proposed or existing primary  
44 dwelling, within an existing or proposed accessory structure,  
45 constructed in whole or part as an extension to a proposed or

**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 existing primary dwelling, or constructed as a separate detached  
2 structure on the same lot as the existing or proposed primary  
3 dwelling.

4 “Accessory structure” means a structure that is accessory and  
5 incidental to a dwelling located on the same lot.

6 “Buildable area” means that area within the rear yard of a lot on  
7 which a primary dwelling is located that is beyond a five-foot  
8 setback line from the side and rear property lines.

9 “Commissioner” means the Commissioner of Community  
10 Affairs.

11 “Department” means the Department of Community Affairs.

12 “Primary dwelling” means a single-family or two-family  
13 dwelling proposed or existing on a residential lot.

14 “Single-family dwelling” means any structure that contains a  
15 single-family dwelling unit on an individual lot, including  
16 structures that are attached to other single-family dwellings with a  
17 common party wall commonly known as “semi-detached” houses,  
18 “row houses” or “townhouses”.

19 “Tandem parking” means parking two or more automobiles on a  
20 driveway or another location on a lot, aligned so that one  
21 automobile is parked immediately behind the another.

22 “Two-family dwelling” means any structure that contains two  
23 separate dwelling units on an individual lot, whether separated  
24 horizontally or vertically.

25

26 3. (New section) a. A municipality may adopt or amend  
27 existing land use regulations to authorize a person to develop one or  
28 more accessory dwelling units on a lot owned by the person, and  
29 located within an area meeting the requirements of subsection c. of  
30 this section, in a manner consistent with the standards and  
31 procedures set forth in P.L. , c. (C. ) (pending before the  
32 Legislature as this bill).

33 b. A provision of a municipal land use regulation that is in place  
34 on the effective date of P.L. , c. (C. ) (pending before the  
35 Legislature as this bill) but fails to comply with the requirements of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill)  
37 shall be null, void, and unenforceable. A municipality shall follow  
38 the requirements of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill) when considering an application to develop  
40 an accessory dwelling unit, unless and until the municipality adopts  
41 or amends its land use regulations in a manner consistent with the  
42 standards and procedures set forth in P.L. , c. (C. )  
43 (pending before the Legislature as this bill).

44 c. Except as otherwise provided in section 5 of P.L. ,  
45 c. (C. ) (pending before the Legislature as this bill), land use  
46 regulations adopted or amended pursuant to P.L. c. (C. )  
47 (pending before the Legislature as this bill) shall provide that an  
48 accessory dwelling unit is a permitted use as of right on a lot if a

1 primary dwelling exists or is being proposed on the lot, and the lot  
2 is located within a zone in which a single-family dwelling or a two-  
3 family dwelling is permitted under the municipal land use  
4 regulations. An accessory dwelling unit shall be deemed to not  
5 exceed the allowable density for the lot upon which the accessory  
6 dwelling unit is proposed to be located or deemed to be the  
7 expansion of a prior nonconforming use.

8 d. The land use regulations shall also provide that:

9 (1) An accessory dwelling unit may be either located within or  
10 attached to the proposed or existing primary dwelling or to a  
11 proposed or existing garage or other accessory structure, or  
12 detached from the proposed or existing primary dwelling but  
13 located on the same lot as the proposed or existing primary  
14 dwelling. A passageway between the primary dwelling and a  
15 detached accessory structure shall not be required.

16 (2) An accessory dwelling unit may be rented separately from  
17 the primary dwelling, but shall not be sold or otherwise conveyed  
18 separately from the primary dwelling.

19 (3) Land use regulations shall not prohibit an applicant from  
20 seeking approval to develop an accessory dwelling unit, either  
21 simultaneously with or separately from the development of a  
22 primary dwelling.

23  
24 4. (New section) a. Municipal land use regulations concerning  
25 accessory dwelling units shall comply with the following standards:

26 (1) The minimum floor area requirement, if any, shall be no  
27 greater than 300 square feet.

28 (2) The maximum floor area requirement, if any, shall be no  
29 smaller than 1,200 square feet, except as otherwise provided in  
30 subsection h. of section 5 of P.L. , c. (C. ) (pending before  
31 the Legislature as this bill).

32 (3) The maximum height requirement, if any, shall be no less  
33 than 20 feet.

34 (4) A developer shall not be required to install fire sprinklers in  
35 an accessory dwelling unit if there is no requirement to install fire  
36 sprinklers in the primary dwelling.

37 (5) (a) There shall be no setback requirements for any accessory  
38 dwelling unit that is located within an existing structure or a  
39 structure constructed in the same location and to the same  
40 dimensions as an existing structure being converted to an accessory  
41 dwelling unit;

42 (b) There shall be no more than a five-foot sideyard and  
43 rearyard setback requirement for any other accessory dwelling unit.

44 (6) An accessory dwelling unit shall provide direct exterior  
45 access separate from the direct exterior access from the primary  
46 dwelling.

1 (7) Parking requirements for accessory dwelling units shall not  
2 exceed one parking space per accessory dwelling unit, which may  
3 be provided as tandem parking.

4 (8) If a garage or other covered parking structure or any parking  
5 space within such structure is removed in conjunction with the  
6 construction of an accessory dwelling unit or converted to an  
7 accessory dwelling unit, the municipality shall not require that those  
8 offstreet parking spaces be replaced.

9 b. A provision of a land use regulation that does not comply  
10 with the provisions of this section shall be void and shall not be  
11 enforced by a municipal agency.

12  
13 5. (New section) a. A municipal land use regulation may  
14 provide that a municipal agency shall not approve an application to  
15 develop an accessory dwelling unit if either:

16 (1) the proposed site is located within an area in which there  
17 exists insufficient public sewer or water service, and within which  
18 there exists severe constraints on the use of wells and septic tanks,  
19 as determined by a competent authority, so to render the addition of  
20 a dwelling unit hazardous to the public health; or

21 (2) the proposed site is located on a lot so small that an 800  
22 square foot structure cannot be reasonably accommodated without  
23 violating the minimum sideyard or rearyard setback requirements of  
24 section 4 of P.L. , c. (C. ) (pending before the Legislature  
25 as this bill).

26 b. A municipal land use regulation may establish reasonable  
27 landscaping standards for detached accessory dwelling units.

28 c. A municipal land use regulation may impose architectural  
29 review requirements for an application proposing to develop an  
30 accessory dwelling unit within an area designated as a historic  
31 district by a competent state or local authority, if the proposed  
32 development requires either new construction or exterior  
33 modification of an existing structure.

34 d. A municipal land use regulation may reduce or eliminate off-  
35 street parking requirements imposed upon the development of an  
36 accessory dwelling unit otherwise applicable under municipal land  
37 use regulation or Statewide site improvement standards adopted  
38 pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4).

39 e. A municipal land use regulation may provide that a municipal  
40 agency shall not approve an application to develop an accessory  
41 dwelling unit on a parcel of property unless the applicant is the  
42 owner-occupant of an existing or proposed primary dwelling on the  
43 property.

44 f. A municipal land use regulation may provide that an  
45 accessory dwelling unit shall not be rented for a period of less than  
46 30 days.

47 g. A municipal land use regulation may provide that an  
48 accessory dwelling unit is a permitted use in zoning districts in

1 addition to those required pursuant to subsection c. of section 3 of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill),  
3 including but not limited to multifamily and mixed use districts.

4 h. A municipal land use regulation may limit the maximum size  
5 of an accessory dwelling unit constructed separately from the  
6 primary dwelling to that square footage that is not in excess of 60  
7 percent of the lot's buildable area.

8  
9 6. (New section) a. (1) An application to develop an  
10 accessory dwelling unit shall be considered and approved as a  
11 ministerial action without a public hearing, and without review  
12 beyond that necessary to determine compliance with: the provisions  
13 of P.L. , c. (C. ) (pending before the Legislature as this  
14 bill); or, if the municipality has adopted land use regulations  
15 consistent with those provisions, the municipality's land use  
16 regulations.

17 (2) A municipal agency shall provide an applicant with a  
18 decision on an application to develop an accessory dwelling unit on  
19 a lot that contains an existing or proposed single-family or two-  
20 family dwelling within 60 days of the date the applicant submits a  
21 complete application.

22 (3) If an application to develop an accessory dwelling unit is  
23 submitted together with an application to develop a new single-  
24 family dwelling on the same lot, upon the applicant's request, both  
25 applications shall be considered and acted upon by the appropriate  
26 approving authority as a single application. An approval of an  
27 application to develop an accessory dwelling unit that is submitted  
28 together with an application to develop a new single-family  
29 dwelling on the same lot shall not impose conditions on approval of  
30 the accessory dwelling unit beyond those necessary to comply with  
31 the provisions of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill), or with municipal land use regulations  
33 adopted to be consistent with those provisions.

34 (4) Unless an applicant agrees to toll the 60-day time period  
35 allowed for a municipal agency to render a decision on an  
36 application pursuant to paragraph (2) of this subsection, if the  
37 municipal agency does not act upon a complete application within  
38 the 60-day time period, the application shall be deemed approved.  
39 A municipal agency may charge a reasonable fee to cover the costs  
40 associated with reviewing and approving an application to develop  
41 an accessory dwelling unit.

42 b. A municipality shall not interpret and apply a provision of  
43 any other municipal ordinance, policy, or regulation so to delay or  
44 deny approval of an application to develop an accessory dwelling  
45 unit.

46 c. A municipality shall not condition approval of an application  
47 to develop an accessory dwelling unit upon the correction of a  
48 nonconforming zoning condition.

1       d. (1) For an accessory dwelling unit created within an existing  
2 primary dwelling, or as an extension onto an existing primary  
3 dwelling, the applicant shall not be required to install a new or  
4 separate utility connection directly between the accessory dwelling  
5 unit and the utility or impose a related connection fee or capacity  
6 charge, unless the accessory dwelling unit was constructed together  
7 with a new single-family dwelling.

8       (2) For an accessory dwelling unit that is created as a separate  
9 structure that is not part of an existing primary dwelling, the  
10 applicant may be required to install a new or separate utility  
11 connection directly between the accessory dwelling unit and the  
12 utility, in which case the connection may be subject to a connection  
13 fee or capacity charge that shall be no more than half the fee  
14 charged for a new primary dwelling and that shall not exceed the  
15 reasonable cost of providing this service.

16       e. Nothing contained in this section shall supersede provisions  
17 of the State Uniform Construction Code, promulgated to effectuate  
18 the "State Uniform Construction Code Act," P.L.1975, c.217  
19 (C.52:27D-119 et seq.), applicable to the construction of an  
20 accessory dwelling unit; provided, however, that with respect to an  
21 accessory dwelling unit or part thereof being constructed within an  
22 existing primary dwelling, the provisions of the Rehabilitation  
23 Subcode adopted pursuant to section 5 of P.L.1975, c.217  
24 (C.52:27D-123) shall apply.

25       f. A municipality shall not issue a certificate of occupancy for  
26 an accessory dwelling unit before the municipality issues a  
27 certificate of occupancy for the primary dwelling.

28

29       7. (New section) a. A municipality shall submit land use  
30 regulations concerning accessory dwelling units that it adopts  
31 pursuant to the provisions of P.L.       , c.       (C.       ) (pending  
32 before the Legislature as this bill) to the Department of Community  
33 Affairs within 60 days of the date of adoption of the regulations.

34       b. The department shall review land use regulations concerning  
35 accessory dwelling units that a municipality submits pursuant to  
36 subsection a. of this section, and shall notify the municipality,  
37 within 60 days of the date the department receives a municipality's  
38 land use regulations, of any provision in the regulations that do not  
39 comply with the provisions and intent of P.L.       , c.       (C.       )  
40 (pending before the Legislature as this bill). If the department does  
41 not notify a municipality that a provision of its land use regulations  
42 do not comply with the provisions and intent of P.L.       ,  
43 c.       (C.       ) (pending before the Legislature as this bill) within  
44 60 days of the date the department receives a municipality's land  
45 use regulations, the regulations shall be deemed approved.

46       c. Within 90 days of the date a municipality receives notice of  
47 the department's determination that a provision of the  
48 municipality's land use regulations does not comply with the

1 provisions and intent of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill), the municipality shall either:

3 (1) amend the regulations to conform them with the provisions  
4 and intent of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill); or

6 (2) respond to the departmental notice by setting forth the  
7 municipality's reasons why its regulations do not comply with the  
8 provisions and intent of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill), and requesting the department to approve  
10 the municipal regulations.

11 d. The department shall review any response from a  
12 municipality, giving full consideration to the specific environmental  
13 and other conditions affecting that municipality as well as the intent  
14 of P.L. , c. (C. ) (pending before the Legislature as this  
15 bill), and shall notify the municipality either:

16 (1) that the municipality may retain all or some part of its land  
17 use regulations; or

18 (2) that the municipality is required to amend provisions of its  
19 land use regulations to be consistent with the provisions and intent  
20 of P.L. , c. (C. ) (pending before the Legislature as this  
21 bill).

22 e. Within 60 days of the date of receipt of the department's  
23 notice pursuant to paragraph (2) of subsection d. of this section, a  
24 municipality shall amend its regulations as may be required by the  
25 department pursuant to subsection d. of this section.

26 f. If a municipality does not approve an application to develop  
27 an accessory dwelling unit, or imposes conditions on an approval of  
28 an application to develop an accessory dwelling unit, the applicant  
29 may appeal the decision to the commissioner. If the commissioner  
30 determines that the municipality's reasons for withholding approval  
31 or imposing conditions are inconsistent with the provisions of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill),  
33 notwithstanding whether the municipal ordinance was approved as a  
34 result of inaction by the department as set forth in subsection c. of  
35 this section, the commissioner shall approve the application, and  
36 shall levy the cost of the proceedings, including the applicant's  
37 legal expenses, if any, against the municipality. In the event of a  
38 subsequent judicial appeal of the commissioner's decision, the court  
39 shall apply the same standard of review as set forth in this  
40 subsection for the commissioner's decision on an appeal.

41 g. The department may adopt rules and regulations for the  
42 purpose of clarifying or supplementing any of the terms, standards  
43 or procedures set forth in P.L. , c. (C. ) (pending before  
44 the Legislature as this bill).

45

46 8. (New section) a. (1) An association formed for the  
47 management of common elements and facilities of a planned real  
48 estate development, regardless of whether organized pursuant to



1 section 1 of P.L.1993, c.30 (C.45:22A-43), shall not, after the  
2 effective date of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill), adopt or enforce a restriction, covenant,  
4 bylaw, rule, regulation, master deed provision, or provision of a  
5 governing document prohibiting or unreasonably restricting the  
6 development or use of an accessory dwelling unit on a lot zoned for  
7 single-family residential use if the proposed accessory dwelling unit  
8 is consistent with the requirements of P.L. , c. (C. )  
9 (pending before the Legislature as this bill).

10 (2) Any covenant, restriction, or condition contained in a deed,  
11 contract, security instrument, or other instrument affecting the  
12 transfer or sale of any interest in a planned real estate development,  
13 and any provision of a master deed, bylaw, or other governing  
14 document that either prohibits or unreasonably restricts the  
15 development or use of an accessory dwelling unit on a lot zoned for  
16 single-family or two-family residential use, is void and  
17 unenforceable if the proposed accessory dwelling unit is consistent  
18 with the requirements of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill).

20 b. An association may impose design or landscaping conditions  
21 on the development of an accessory dwelling unit if the conditions:

22 (1) are not in excess of conditions generally imposed within the  
23 planned real estate development; and

24 (2) do not unreasonably increase the cost to construct,  
25 effectively prohibit the construction of, or extinguish the ability to  
26 otherwise construct, an accessory dwelling unit consistent with the  
27 provisions of P.L. , c. (C. ) (pending before the  
28 Legislature as this bill).

29

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

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

33 a. "Council" means the Council on Affordable Housing  
34 established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall  
35 have primary jurisdiction for the administration of housing  
36 obligations in accordance with sound regional planning  
37 considerations in this State.

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

44 c. "Low income housing" means housing affordable according  
45 to federal Department of Housing and Urban Development or other  
46 recognized standards for home ownership and rental costs and  
47 occupied or reserved for occupancy by households with a gross  
48 household income equal to 50 percent or less of the median gross

1 household income for households of the same size within the  
2 housing region in which the housing is located.

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

11 e. "Resolution of participation" means a resolution adopted by  
12 a municipality in which the municipality chooses to prepare a fair  
13 share plan and housing element in accordance with P.L.1985, c.222  
14 (C.52:27D-301 et al.).

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

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

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

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

30 j. "Prospective need" means a projection of housing needs  
31 based on development and growth which is reasonably likely to  
32 occur in a region or a municipality, as the case may be, as a result  
33 of actual determination of public and private entities. In  
34 determining prospective need, consideration shall be given to  
35 approvals of development applications, real property transfers, and  
36 economic projections prepared by the State Planning Commission  
37 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
38 196 et seq.).

39 k. " Person with a disability" means a person with a physical  
40 disability, infirmity, malformation, or disfigurement which is  
41 caused by bodily injury, birth defect, aging, or illness including  
42 epilepsy and other seizure disorders, and which shall include, but  
43 not be limited to, any degree of paralysis, amputation, lack of  
44 physical coordination, blindness or visual impairment, deafness or  
45 hearing impairment, the inability to speak or a speech impairment,  
46 or physical reliance on a service animal, wheelchair, or other  
47 remedial appliance or device.

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

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

14 n. "Accessory dwelling unit" means a residential dwelling unit  
15 that provides complete independent living facilities for one or more  
16 persons, including provisions for living, sleeping, eating, cooking,  
17 and sanitation, and is located within a proposed or existing primary  
18 dwelling, within an existing or proposed accessory structure,  
19 constructed in whole or part as an extension to a proposed or  
20 existing primary dwelling, or constructed as a separate detached  
21 structure on the same lot as the existing or proposed primary  
22 dwelling.

23 (cf: P.L.2017, c.131, s.199)  
24

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

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

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

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

- 1       (3) Determination of measures that the municipality will take to  
2 assure that low and moderate income units remain affordable to low  
3 and moderate income households for an appropriate period of not  
4 less than six years;
- 5       (4) A plan for infrastructure expansion and rehabilitation if  
6 necessary to assure the achievement of the municipality's fair share  
7 of low and moderate income housing;
- 8       (5) Donation or use of municipally owned land or land  
9 condemned by the municipality for purposes of providing low and  
10 moderate income housing;
- 11       (6) Tax abatements for purposes of providing low and moderate  
12 income housing;
- 13       (7) Utilization of funds obtained from any State or federal  
14 subsidy toward the construction of low and moderate income  
15 housing;
- 16       (8) Utilization of municipally generated funds toward the  
17 construction of low and moderate income housing; and
- 18       (9) The purchase of privately owned real property used for  
19 residential purposes at the value of all liens secured by the property,  
20 excluding any tax liens, notwithstanding that the total amount of  
21 debt secured by liens exceeds the appraised value of the property,  
22 pursuant to regulations promulgated by the Commissioner of  
23 Community Affairs pursuant to subsection b. of section 41 of  
24 P.L.2000, c.126 (C.52:27D-311.2).
- 25       b. The municipality may provide for a phasing schedule for the  
26 achievement of its fair share of low and moderate income housing.
- 27       c. (Deleted by amendment, P.L.2008, c.46)
- 28       d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
29 require a municipality to raise or expend municipal revenues in  
30 order to provide low and moderate income housing.
- 31       e. When a municipality's housing element includes the  
32 provision of rental housing units in a community residence for the  
33 developmentally disabled, as defined in section 2 of P.L.1977,  
34 c.448 (C.30:11B-2), which will be affordable to persons of low and  
35 moderate income, and for which adequate measures to retain such  
36 affordability pursuant to paragraph (3) of subsection a. of this  
37 section are included in the housing element, those housing units  
38 shall be fully credited as permitted under the rules of the council  
39 towards the fulfillment of the municipality's fair share of low and  
40 moderate income housing.
- 41       f. It having been determined by the Legislature that the  
42 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
43 a public purpose, a municipality or municipalities may utilize public  
44 monies to make donations, grants or loans of public funds for the  
45 rehabilitation of deficient housing units and the provision of new or  
46 substantially rehabilitated housing for low and moderate income  
47 persons, providing that any private advantage is incidental.

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.

6       h. Whenever affordable housing units are proposed to be  
7 provided through an inclusionary development, a municipality shall  
8 provide, through its zoning powers, incentives to the developer,  
9 which shall include increased densities and reduced costs, in  
10 accordance with the regulations of the council and this subsection.

11       i. The council, upon the application of a municipality and a  
12 developer, may approve reduced affordable housing set-asides or  
13 increased densities to ensure the economic feasibility of an  
14 inclusionary development.

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

40       k. A municipality's housing element shall include a plan to  
41 promote the creation of accessory dwelling units that will be offered  
42 at affordable rent for low and moderate income households.  
43 (cf: P.L.2013, c.6, s.1)

44  
45       11. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
46 read as follows:

47       20. There is established in the Department of Community  
48 Affairs a separate trust fund, to be used for the exclusive purposes

1 as provided in this section, and which shall be known as the "New  
2 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
3 lapsing, revolving trust fund, and all monies deposited or received  
4 for purposes of the fund shall be accounted for separately, by source  
5 and amount, and remain in the fund until appropriated for such  
6 purposes. The fund shall be the repository of all State funds  
7 appropriated for affordable housing purposes, including, but not  
8 limited to, the proceeds from the receipts of the additional fee  
9 collected pursuant to paragraph (2) of subsection a. of section 3 of  
10 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the  
11 Statewide non-residential development fees collected pursuant to  
12 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or  
13 reverting from municipal development trust funds, or other monies  
14 as may be dedicated, earmarked, or appropriated by the Legislature  
15 for the purposes of the fund. All references in any law, order, rule,  
16 regulation, contract, loan, document, or otherwise, to the  
17 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
18 mean the "New Jersey Affordable Housing Trust Fund." The  
19 department shall be permitted to utilize annually up to 7.5 percent  
20 of the monies available in the fund for the payment of any  
21 necessary administrative costs related to the administration of the  
22 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
23 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
24 al.).

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

36 Of those monies deposited into the "New Jersey Affordable  
37 Housing Trust Fund" that are derived from municipal development  
38 fee trust funds, or from available collections of Statewide non-  
39 residential development fees, a priority for funding shall be  
40 established for projects in municipalities that have petitioned the  
41 council for substantive certification.

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

45 b. The commissioner shall establish rules and regulations  
46 governing the qualifications of applicants, the application  
47 procedures, and the criteria for awarding grants and loans and the

1 standards for establishing the amount, terms, and conditions of each  
2 grant or loan.

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

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

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

17 (2) Creation of accessory **[apartments]** dwelling units to be  
18 occupied by low and moderate income households;

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

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

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

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

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

1 e. Any grant or loan agreement entered into pursuant to this  
2 section shall incorporate contractual guarantees and procedures by  
3 which the division will ensure that any unit of housing provided for  
4 low and moderate income households shall continue to be occupied  
5 by low and moderate income households for at least 20 years  
6 following the award of the loan or grant, except that the division  
7 may approve a guarantee for a period of less than 20 years where  
8 necessary to ensure project feasibility.

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

25 g. In addition to other grants or loans awarded pursuant to this  
26 section, and without regard to any limitations on such grants or  
27 loans for any other purposes herein imposed, the commissioner  
28 shall annually allocate such amounts as may be necessary in the  
29 commissioner's discretion, and in accordance with section 3 of  
30 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
31 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
32 287.1 et al.). Such rental assistance grants shall be deemed  
33 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
34 301 et al.), in order to meet the housing needs of certain low income  
35 households who may not be eligible to occupy other housing  
36 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

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



controls. The report also shall include details pertaining to those monies allocated from the fund for use by the State rental assistance program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

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

12. This act shall take effect immediately.

#### STATEMENT

This bill would authorize owners of property zoned for single-family or two-family residential use to develop an accessory dwelling unit (ADU) on their property consistent with Statewide standards for the development of ADUs. The bill would permit each municipality to adopt or amend its land use regulations to be consistent with the bill's Statewide standards.

Under the bill, a municipality may authorize a person to develop one or more ADUs on a lot owned by the person and located within a zone in which a single- or two-family dwelling is permitted under the municipal land use regulations. While allowing a municipality to impose some exceptions in adopting its land use regulations regarding the development of ADUs, the bill would require municipal land use regulations to provide that an ADU is a permitted use as of right on a lot if a primary dwelling exists or is being proposed on the lot, and the lot is located within a zone in which a single-family dwelling or a two-family dwelling is permitted under the municipal land use regulations.

The bill defines ADU as a residential dwelling unit that provides complete independent living facilities for one or more persons, and is either: located within a proposed or existing primary dwelling; located within a proposed or existing accessory structure; constructed in whole or part as an extension to a proposed or existing primary dwelling; or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

The bill would require a municipality's land use regulations to provide that:

- an ADU may be either located within or attached to the proposed or existing primary dwelling or to a proposed or existing garage or other accessory structure, or detached from the proposed or existing primary dwelling but located on the same lot as the proposed or existing primary dwelling.

1 A municipality would be prohibited from requiring  
2 installation of a passageway between a primary dwelling and  
3 a detached accessory structure;

- 4 • an ADU may be rented separately from the primary  
5 dwelling, but is prohibited from being sold or otherwise  
6 conveyed separately from the primary dwelling; and
- 7 • a municipality is prohibited from requiring an applicant to  
8 seek approval to develop an ADU, either simultaneously  
9 with or separately from the development of a primary  
10 dwelling.

11 The bill would require municipal land use regulations concerning  
12 ADUs to comply with the following standards:

- 13 • a minimum floor area requirement of no greater than 300  
14 square feet;
- 15 • a maximum floor area requirement of no smaller than 1,200  
16 square feet;
- 17 • a maximum height requirement of no less than 20 feet;
- 18 • no requirement to install fire sprinklers in an ADU if there is  
19 no requirement to install fire sprinklers in the primary  
20 dwelling;
- 21 • no setback requirements for an ADU that is located within  
22 an existing structure or a structure constructed in the same  
23 location and to the same dimensions as an existing structure  
24 being converted to an ADU;
- 25 • no more than a five-foot sideyard and rearyard setback  
26 requirement for any other ADU;
- 27 • an ADU must provide direct exterior access separate from  
28 the direct exterior access from the primary dwelling;
- 29 • no parking requirement for an ADU in excess of one parking  
30 space per ADU, which may be provided as tandem parking;  
31 and
- 32 • no requirement to replace an offstreet parking space being  
33 removed in conjunction with the construction of, or  
34 conversion to, an ADU.

35 If a municipality's land use regulations do not comply with the  
36 above requirements, the regulations would be void and  
37 unenforceable.

38 The bill sets forth the following specific circumstances under  
39 which a municipal agency may deny an application to develop an  
40 ADU:

- 41 • the proposed site is located within an area in which there  
42 exists insufficient public sewer or water service, and within  
43 which there exists severe constraints on the use of wells and  
44 septic tanks, which render the addition of a dwelling unit  
45 hazardous to the public health; or
- 46 • the proposed site is located on a lot so small that an 800  
47 square foot structure cannot be reasonably accommodated

1 without violating the bill's minimum sideyard or rearyard  
2 setback requirements.

3 The bill would allow a municipality's land use regulations to:

- 4 • establish reasonable landscaping standards for detached  
5 ADUs;
- 6 • impose architectural review requirements for an application  
7 proposing to develop an ADU within an area designated as a  
8 historic district, if the proposed development requires either  
9 new construction or exterior modification of an existing  
10 structure;
- 11 • reduce or eliminate off-street parking requirements imposed  
12 upon the development of an ADU otherwise applicable  
13 under municipal land use regulation or Statewide site  
14 improvement standards;
- 15 • provide that a municipal agency shall not approve an  
16 application to develop an ADU on a parcel of property  
17 unless the applicant is the owner-occupant of an existing or  
18 proposed primary dwelling on the property;
- 19 • provide that an ADU is prohibited from being rented for a  
20 period of less than 30 days;
- 21 • provide that an ADU is a permitted use in additional zoning  
22 districts; and
- 23 • limit the maximum size of an ADU constructed separately  
24 from the primary dwelling to that square footage that is not  
25 in excess of 60 percent of the lot's buildable area, as  
26 defined in the bill.

27 The bill provides that an application to develop an ADU is to be  
28 considered and approved ministerially, without public hearing, and  
29 without review beyond that necessary to determine compliance with  
30 the provisions of the bill or municipal land use regulations adopted  
31 consistent with the bill. The bill would allow a municipal agency to  
32 charge a reasonable fee to cover the costs associated with reviewing  
33 and approving an application to develop an accessory dwelling unit.

34 The bill requires a municipal agency to provide an applicant with  
35 its decision on an application to develop an ADU within 60 days of  
36 the date the applicant submits a complete application. Unless the  
37 applicant agrees to toll this 60-day time period, if the municipal  
38 agency does not act upon the application within the 60-day time  
39 period, the application is to be deemed approved.

40 If an application to develop an ADU is submitted together with  
41 an application to develop a new single-family dwelling on the same  
42 lot, upon the applicant's request, the appropriate municipal agency  
43 is to consider and act upon both applications as a single application.  
44 The bill would prohibit a municipal agency from imposing  
45 conditions, beyond those necessary to comply with the provisions  
46 of the bill, upon the approval of an application to develop an ADU,  
47 if the application is submitted together with an application to  
48 develop a new single-family dwelling on the same lot.

- 1       Additionally, the bill would prohibit a municipality from:
- 2       • interpreting and applying a provision of any other municipal
- 3       ordinance, policy, or regulation so to delay or deny approval
- 4       of an application to develop an ADU.
- 5       • conditioning approval of an application to develop an ADU
- 6       upon the correction of a nonconforming zoning condition.
- 7       • requiring, for an application to develop an ADU within an
- 8       existing primary dwelling or as an extension onto an existing
- 9       primary dwelling, the installation of a new or separate utility
- 10      connection directly between the ADU and the utility, or
- 11      imposition of a related connection fee or capacity charge,
- 12      unless the ADU is being constructed together with a new
- 13      single-family dwelling.

14      If an application is submitted to develop an ADU as a separate

15      structure, not part of an existing primary dwelling, a municipal

16      agency may require the applicant to install a new or separate utility

17      connection directly between the ADU and the utility, subject to a

18      connection fee or capacity charge of no more than half the fee

19      charged for a new primary dwelling, which fee shall not exceed the

20      reasonable cost of providing this service.

21      The bill would not supersede provisions of the State Uniform

22      Construction Code applicable to the construction of ADUs,

23      however, the bill specifies that the provisions of the Rehabilitation

24      Subcode of the State Uniform Construction Code is to apply to the

25      construction of an ADU within an existing primary dwelling.

26      Additionally, the bill would prohibit issuance of a certificate of

27      occupancy for an ADU under the State Uniform Construction Code

28      prior to issuance of a certificate of occupancy for the primary

29      dwelling.

30      The bill would require a municipality to submit land use

31      regulations it adopts concerning ADUs to the Department of

32      Community Affairs within 60 days of the date of adoption of the

33      municipal land use regulations. The department would review the

34      municipal land use regulations concerning ADUs and notify the

35      municipality within 60 days of the date the department receives a

36      municipality's regulations of any provision in the regulations that

37      does not comply with the bill's provisions. Under the bill, if the

38      department does not notify a municipality, within 60 days of the

39      date the department receives a municipality's land use regulations

40      concerning ADUs, that a provision of the municipal land use

41      regulations does not comply with the bill's provisions, the

42      regulations are to be deemed approved.

43      Within 90 days of the date a municipality receives notice of the

44      department's determination that a provision of the municipality's

45      land use regulations does not comply with the provisions of this

46      bill, the municipality shall either:

47          amend its regulations to conform them with the provisions and

48          intent of the bill; or

1       respond to the department by: asking it to approve the municipal  
2 regulations, and explaining the municipality's reasons why its  
3 regulations do not comply with the provisions and intent of this bill.

4       In the case of the latter, the department would review the  
5 municipality's response, consider the specific conditions affecting  
6 that municipality, as well as the intent of this bill, and notify the  
7 municipality either:

8       that the municipality may retain all or some part of its land use  
9 regulations; or

10       that the municipality is required to amend provisions of its land  
11 use regulations to be consistent with the provisions and intent of the  
12 bill.

13       Within 60 days of the date of receipt of the department's notice  
14 requiring it to amend its land use regulations to be consistent with  
15 the provisions and intent of the bill, the municipality is required to  
16 amend its regulations.

17       If a municipality does not approve an application to develop an  
18 ADU, or imposes conditions on an approval of an application to  
19 develop an ADU, the applicant may appeal the decision to the  
20 Commissioner of Community Affairs. If the commissioner  
21 determines that the municipality's reasons for withholding approval  
22 or imposing conditions are inconsistent with the bill's provisions,  
23 the commissioner is required to approve the application, and levy  
24 the cost of the proceedings, including the applicant's legal  
25 expenses, if any, against the municipality.

26       The bill also amends the law governing associations formed for  
27 the management of common elements and facilities of a planned  
28 real estate development to prohibit the adoption or enforcement of  
29 a restriction, covenant, bylaw, rule, regulation, master deed  
30 provision, or governing document provision that prohibits or  
31 unreasonably restricts the development or use of an ADU on a lot  
32 zoned for single-family residential use if the proposed ADU is  
33 consistent with the bill's requirements. Under the bill, any  
34 provisions of a planned real estate development's governing  
35 documents that either prohibit or unreasonably restrict the  
36 development or use of an ADU on a lot zoned for single-family or  
37 two-family residential use is void and unenforceable if the proposed  
38 ADU is consistent with the requirements of the bill. However, the  
39 bill specifically authorizes an association to impose design or  
40 landscaping conditions on the development of an ADU if the  
41 conditions: are not in excess of conditions generally imposed within  
42 the planned real estate development; do not unreasonably increase  
43 the cost to construct, effectively prohibit the construction of, or  
44 extinguish the ability to otherwise construct, an ADU consistent  
45 with the provisions of the bill.

46       The bill would also amend the "Fair Housing Act,"  
47 N.J.S.A.52:27D-301 et al., to require a municipality's master plan  
48 housing element to include a plan to promote the creation of ADUs

1   that will be offered at affordable rent for low- and moderate-income  
2   households, and to clarify that amounts deposited in the "New  
3   Jersey Affordable Housing Trust Fund" may be applied for the  
4   purpose of creating ADUs to be occupied by low- and moderate-  
5   income households.