

# SENATE, No. 204

## STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**  
**Senator JON M. BRAMNICK**  
**District 21 (Morris, Somerset and Union)**

**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10 that are not repealed by P.L.     , c.     (C.     ) (pending before the  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.       ,  
13      c. (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).

47  
48 25. a. The following sections are repealed:

1 Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
2 C.40:55D-8.7);

3 Section 39 of P.L.2009, c.90 (C.40:55D-8.8);

4 Sections 5 and 6 of P.L.1985 c.222 (C.52:27D-305) and  
5 (C.52:27D-306);

6 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);

7 Sections 8 through 9 of P.L.1985, c.222 (C.52:27D-308) through  
8 (C.52:27D-309);

9 Sections 1 and 2 of P.L.1995, c.231 (C.52:27D-310.1) and  
10 (C.52:27D-310.2);

11 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);

12 Section 13 of P.L.1985, c.222 (C.52:27D-313);

13 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);

14 Sections 14 through 19 of P.L.1985, c.222 (C.52:27D-314) through  
15 (C.52:27D-319);

16 Sections 7 through 9 of P.L.2008, c.46 (C.52:27D-329.1) through  
17 (C.52:27D-329.3);

18 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);

19 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and

20 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

21 b. Section 7 of P.L.1985, c.222 (C.52:27D-307) is repealed.

22  
23 26. This act shall take effect immediately, except that sections 1  
24 and subsection b. of section 25 shall be inoperative until the first  
25 day of the seventh month next following enactment.

## 26 27 28 STATEMENT

29  
30 The bill reforms the State's affordable housing laws, and  
31 simplifies the mechanisms for determining compliance with the  
32 "Fair Housing Act," ("FHA") P.L.1985, c.222 (C.52:27D-301 et  
33 al.). This legislation codifies the dissolution of the Council on  
34 Affordable Housing ("COAH"), established pursuant to the FHA,  
35 and transfers responsibility for FHA administration to the  
36 Department of Community Affairs ("DCA"). The bill advances the  
37 conclusion of the 2010 Housing Opportunity Task Force that simply  
38 requiring 10 percent of prospective residential growth to be  
39 affordable would be more effective in producing affordable units  
40 than the more complex current system. The bill also repeals the  
41 "Statewide Non-Residential Development Fee Act," enacted as  
42 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
43 C.40:55D-8.7).

44 The bill directs municipalities to apply to DCA to determine  
45 inclusionary status. The bill directs DCA to designate  
46 municipalities as inclusionary if:

47 (1) at least 7.5 percent of its total present housing stock is  
48 price-restricted;

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

46      In municipalities that have not obtained inclusionary status,

47      proposed developments that satisfy the 10 percent set-aside

1 requirement may be deemed inherently beneficial for the purposes  
2 of obtaining a zoning variance.

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

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