

# SENATE, No. 821

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Senator ANTHONY M. BUCCO**

**District 25 (Morris and Passaic)**

**SYNOPSIS**

Requires COAH to credit municipalities with units against fair share affordable housing obligation for certain types of housing; provides certain types of affordable housing units will be credited as two units.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning affordable housing and amending P.L.1985,  
2 c.222.

3

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

6

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

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

13 a. Determine housing regions of the State;

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

16 c. Adopt criteria and guidelines for:

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

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

44 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
45 certification granted by the council prior to November 21, 1994, 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 of a judgment of compliance entered by any court of competent  
2 jurisdiction prior to that date. Additionally, any municipality that  
3 received substantive certification or a judgment of compliance prior  
4 to November 21, 1994 and filed a motion prior to November 21,  
5 1994 to amend substantive certification or a judgment of  
6 compliance for the purpose of obtaining credits, shall be entitled to  
7 a determination of its right to credits pursuant to the standards  
8 established by the Legislature prior to P.L.1995, c.81. Any  
9 municipality that filed a motion prior to November 21, 1994 for the  
10 purpose of obtaining credits, which motion was supported by the  
11 results of a completed survey performed pursuant to council rules,  
12 shall be entitled to a determination of its right to credits pursuant to  
13 the standards established by the Legislature prior to P.L.1995, c.81;

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

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

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

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

25 (d) Adequate open space would not be provided,

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

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

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

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

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

38 e. In its discretion, place a limit, based on a percentage of  
39 existing housing stock in a municipality and any other criteria  
40 including employment opportunities which the council deems  
41 appropriate, upon the aggregate number of units which may be  
42 allocated to a municipality as its fair share of the region's present  
43 and prospective need for low and moderate income housing. No  
44 municipality shall be required to address a fair share of housing  
45 units affordable to households with a gross household income of  
46 less than 80% of the median gross household income beyond 1,000  
47 units within ten years from the grant of substantive certification,  
48 unless it is demonstrated, following objection by an interested party

1 and an evidentiary hearing, based upon the facts and circumstances  
2 of the affected municipality that it is likely that the municipality  
3 through its zoning powers could create a realistic opportunity for  
4 more than 1,000 low and moderate income units within that ten-  
5 year period. For the purposes of this section, the facts and  
6 circumstances which shall determine whether a municipality's fair  
7 share shall exceed 1,000 units, as provided above, shall be a finding  
8 that the municipality has issued more than 5,000 certificates of  
9 occupancy for residential units in the ten-year period preceding the  
10 petition for substantive certification in connection with which the  
11 objection was filed.

12 For the purpose of crediting low and moderate income housing  
13 units in order to arrive at a determination of present and prospective  
14 fair share, as set forth in paragraph (1) of subsection c. of this  
15 section, housing units comprised in a community residence for the  
16 developmentally disabled, as defined in section 2 of P.L.1977,  
17 c.448 (C.30:11B-2), shall be fully credited pursuant to subsection f.  
18 of this section and rules promulgated or to be promulgated by the  
19 council, to the extent that the units are affordable to persons of low  
20 and moderate income and are available to the general public.

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

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

44 No housing unit subject to the provisions of section 5 of  
45 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
46 barrier free subcode adopted by the Commissioner of Community  
47 Affairs pursuant to the "State Uniform Construction Code Act,"  
48 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for

1 inclusion in the municipal fair share plan certified by the council  
2 unless the unit complies with the requirements set forth thereunder.

3 f. For the purpose of crediting against a fair share obligation,  
4 the council shall permit a municipality to satisfy no less than:

5 (1) two units of its fair share obligation for each unit of housing  
6 restricted for very low income households, as that term is defined  
7 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304);

8 (2) two units of its fair share obligation for each unit of housing  
9 located in a special needs housing project, as that term is defined in  
10 section 2 of P.L.2004, c.70 (C.34:1B-21.24); and

11 (3) one unit of its fair share obligation for each bedroom in a  
12 community residence which is affordable to persons of low and  
13 moderate income. For the purposes of this section, "community  
14 residence" means a shared living environment that provides housing  
15 and treatment or specialized services needed to assist individuals  
16 with special needs to live in community settings, but which is not  
17 considered a health care facility within the meaning of the "Health  
18 Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.)  
19 and shall include, but not be limited to, group homes, halfway  
20 houses, supervised apartment living arrangements, hostels, and  
21 community residences for the developmentally disabled, as defined  
22 in section 2 of P.L.1977, c.448 (C.30:11B-2).

23 (cf: P.L.2008, c.46, s.6)

24

25 2. 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 in accordance with section 2 of P.L. \_\_\_\_\_,  
39 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill and as  
40 permitted under the rules of the council towards the fulfillment of  
41 the municipality's fair share of low and moderate income housing.
- 42 f. It having been determined by the Legislature that the  
43 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
44 a public purpose, a municipality or municipalities may utilize public  
45 monies to make donations, grants or loans of public funds for the  
46 rehabilitation of deficient housing units and the provision of new or  
47 substantially rehabilitated housing for low and moderate income  
48 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 (cf: P.L.2013, c.6, s.1)

41

42 3. This act shall take effect immediately.

43

44

45

STATEMENT

46

47 This bill provides municipalities with credit against their fair  
48 share affordable housing obligation for bedrooms in community

1 residences and provides that certain types of affordable housing  
2 units will be credited as two units.

3 Under the provisions of the bill, the Council on Affordable  
4 Housing (COAH), or its successor body, would credit one unit  
5 toward a municipality's fair share obligation for each bedroom in a  
6 community residence. The bill defines a "community residence" as  
7 a group home, supervised apartment, or other type of shared living  
8 environment that provides housing and treatment or specialized  
9 services needed to assist individuals with special needs to live in  
10 community settings, but which is not considered a health care  
11 facility. The term includes, but is not limited to, group homes,  
12 halfway houses, supervised apartment living arrangements, hostels,  
13 and community residences for the developmentally disabled.

14 The bill also requires COAH to credit at least two units toward a  
15 municipality's fair share obligation for each unit of housing  
16 restricted for very low income households and each unit of special  
17 needs housing.