

ASSEMBLY, No. 2071

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman ANGEL FUENTES

District 5 (Camden and Gloucester)

SYNOPSIS

Reforms procedures concerning provision of affordable housing; abolishes Council on Affordable Housing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/26/2010)

1 AN ACT concerning affordable housing, amending, supplementing,
2 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 certain of its powers, functions and
10 duties are continued in the State Housing Commission established
11 pursuant to section 24 of P.L.2008, c.46 (C.52:27D-329.13), as
12 provided in this amendatory and supplementary act,
13 P.L. , c. (C.) (pending before the Legislature as this bill.
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 State Housing Commission. All appropriations and
18 other moneys available and to become available to the Council on
19 Affordable Housing are hereby continued in the commission, and
20 shall be available for the objects and purposes for which such
21 moneys are appropriated subject to any terms, restriction,
22 limitations or other requirements imposed by State or federal law.

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

26 2. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
27 read as follows:

28 19. a. The planning board may prepare and, after public
29 hearing, adopt or amend a master plan or component parts thereof,
30 to guide the use of lands within the municipality in a manner which
31 protects public health and safety and promotes the general welfare.

32 b. The master plan shall generally comprise a report or
33 statement and land use and development proposals, with maps,
34 diagrams and text, presenting, at least the following elements (1)
35 **[and]**, (2), and (3) and, where appropriate, the following elements
36 **[(3)]** (4) through (16):

37 (1) A statement of objectives, principles, assumptions, policies
38 and standards upon which the constituent proposals for the physical,
39 economic and social development of the municipality are based;

40 (2) A land use plan element (a) taking into account and stating
41 its relationship to the statement provided for in paragraph (1)
42 hereof, and other master plan elements provided for in paragraphs
43 (3) through (14) hereof and natural conditions, including, but not
44 necessarily limited to, topography, soil conditions, water supply,
45 drainage, flood plain areas, marshes, and woodlands; (b) showing

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 the existing and proposed location, extent and intensity of
2 development of land to be used in the future for varying types of
3 residential, commercial, industrial, agricultural, recreational,
4 educational and other public and private purposes or combination of
5 purposes; and stating the relationship thereof to the existing and any
6 proposed zone plan and zoning ordinance; and (c) showing the
7 existing and proposed location of any airports and the boundaries of
8 any airport safety zones delineated pursuant to the "Air Safety and
9 Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et al.); and (d)
10 including a statement of the standards of population density and
11 development intensity recommended for the municipality;

12 (3) A housing plan element pursuant to section 10 of P.L.1985,
13 c.222 (C.52:27D-310), including, but not limited to, residential
14 standards and proposals for the construction and improvement of
15 housing;

16 (4) A circulation plan element showing the location and types of
17 facilities for all modes of transportation required for the efficient
18 movement of people and goods into, about, and through the
19 municipality, taking into account the functional highway
20 classification system of the Federal Highway Administration and
21 the types, locations, conditions and availability of existing and
22 proposed transportation facilities, including air, water, road and rail;

23 (5) A utility service plan element analyzing the need for and
24 showing the future general location of water supply and distribution
25 facilities, drainage and flood control facilities, sewerage and waste
26 treatment, solid waste disposal and provision for other related
27 utilities, and including any storm water management plan required
28 pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If
29 a municipality prepares a utility service plan element as a condition
30 for adopting a development transfer ordinance pursuant to
31 subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan
32 element shall address the provision of utilities in the receiving zone
33 as provided thereunder;

34 (6) A community facilities plan element showing the existing
35 and proposed location and type of educational or cultural facilities,
36 historic sites, libraries, hospitals, firehouses, police stations and
37 other related facilities, including their relation to the surrounding
38 areas;

39 (7) A recreation plan element showing a comprehensive system
40 of areas and public sites for recreation;

41 (8) A conservation plan element providing for the preservation,
42 conservation, and utilization of natural resources, including, to the
43 extent appropriate, energy, open space, water supply, forests, soil,
44 marshes, wetlands, harbors, rivers and other waters, fisheries,
45 endangered or threatened species wildlife and other resources, and
46 which systemically analyzes the impact of each other component
47 and element of the master plan on the present and future
48 preservation, conservation and utilization of those resources;

1 (9) An economic plan element considering all aspects of
2 economic development and sustained economic vitality, including
3 (a) a comparison of the types of employment expected to be
4 provided by the economic development to be promoted with the
5 characteristics of the labor pool resident in the municipality and
6 nearby areas and (b) an analysis of the stability and diversity of the
7 economic development to be promoted;

8 (10) An historic preservation plan element: (a) indicating the
9 location and significance of historic sites and historic districts; (b)
10 identifying the standards used to assess worthiness for historic site
11 or district identification; and (c) analyzing the impact of each
12 component and element of the master plan on the preservation of
13 historic sites and districts;

14 (11) Appendices or separate reports containing the technical
15 foundation for the master plan and its constituent elements;

16 (12) A recycling plan element which incorporates the State
17 Recycling Plan goals, including provisions for the collection,
18 disposition and recycling of recyclable materials designated in the
19 municipal recycling ordinance, and for the collection, disposition
20 and recycling of recyclable materials within any development
21 proposal for the construction of 50 or more units of single-family
22 residential housing or 25 or more units of multi-family residential
23 housing and any commercial or industrial development proposal for
24 the utilization of 1,000 square feet or more of land;

25 (13) A farmland preservation plan element, which shall include:
26 an inventory of farm properties and a map illustrating significant
27 areas of agricultural land; a statement showing that municipal
28 ordinances support and promote agriculture as a business; and a
29 plan for preserving as much farmland as possible in the short term
30 by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-
31 1 et al.) through a variety of mechanisms including, but not limited
32 to, utilizing option agreements, installment purchases, and
33 encouraging donations of permanent development easements;

34 (14) A development transfer plan element which sets forth the
35 public purposes, the locations of sending and receiving zones and
36 the technical details of a development transfer program based on the
37 provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

38 (15) An educational facilities plan element which incorporates
39 the purposes and goals of the "long-range facilities plan" required to
40 be submitted to the Commissioner of Education by a school district
41 pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4); and

42 (16) A green buildings and environmental sustainability plan
43 element, which shall provide for, encourage, and promote the
44 efficient use of natural resources and the installation and usage of
45 renewable energy systems; consider the impact of buildings on the
46 local, regional and global environment; allow ecosystems to
47 function naturally; conserve and reuse water; treat storm water on-

1 site; and optimize climatic conditions through site orientation and
2 design.

3 c. The master plan and its plan elements may be divided into
4 subplans and subplan elements projected according to periods of
5 time or staging sequences.

6 d. The master plan shall include a specific policy statement
7 indicating the relationship of the proposed development of the
8 municipality, as developed in the master plan to (1) the master plans
9 of contiguous municipalities, (2) the master plan of the county in
10 which the municipality is located, (3) the State Development and
11 Redevelopment Plan adopted pursuant to the "State Planning Act,"
12 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)
13 and (4) the district solid waste management plan required pursuant
14 to the provisions of the "Solid Waste Management Act," P.L.1970,
15 c.39 (C.13:1E-1 et seq.) of the county in which the municipality is
16 located.

17 In the case of a municipality situated within the Highlands
18 Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the
19 master plan shall include a specific policy statement indicating the
20 relationship of the proposed development of the municipality, as
21 developed in the master plan, to the Highlands regional master plan
22 adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).
23 (cf: P.L.2008, c.54, s.1)
24

25 3. Section 4 of P.L.1985, c.398 (C.52:18A-199) is amended to
26 read as follows:

27 4. The commission shall:

28 a. Prepare and adopt within 36 months after the enactment of
29 P.L.1985, c.398 (C.52:18A-196 et al.), and revise and readopt at
30 least every **[three]** six years thereafter, the State Development and
31 Redevelopment Plan, which shall provide a coordinated, integrated
32 and comprehensive plan for the growth, development, renewal and
33 conservation of the State and its regions and which shall identify
34 areas for growth, agriculture, open space conservation and other
35 appropriate designations;

36 b. Prepare and adopt as part of the plan a long-term
37 Infrastructure Needs Assessment, which shall provide information
38 on present and prospective conditions, needs and costs with regard
39 to State, county and municipal capital facilities, including water,
40 sewerage, transportation, solid waste, drainage, flood protection,
41 shore protection and related capital facilities;

42 c. Develop and promote procedures to facilitate cooperation
43 and coordination among State agencies, regional entities, and local
44 governments with regard to the development of plans, programs and
45 policies which affect land use, environmental, capital and economic
46 development issues;

47 d. Provide technical assistance to local governments and
48 regional entities in order to encourage the use of the most effective

- 1 and efficient planning and development review data, tools and
2 procedures;
- 3 e. Periodically review State, regional, and local government
4 planning procedures and relationships and recommend to the
5 Governor and the Legislature administrative or legislative action to
6 promote a more efficient and effective planning process;
- 7 f. Review any bill introduced in either house of the Legislature
8 which appropriates funds for a capital project and may study the
9 necessity, desirability and relative priority of the appropriation by
10 reference to the State Development and Redevelopment Plan, and
11 may make recommendations to the Legislature and to the Governor
12 concerning the bill; and
- 13 g. Take all actions necessary and proper to carry out the
14 provisions of P.L.1985, c.398 (C.52:18A-196 et al.).
15 (cf: P.L.2004, c.120, s.64)
16
- 17 4. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
18 read as follows:
- 19 2. The Legislature finds that:
- 20 a. The New Jersey Supreme Court, through its rulings in South
21 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)
22 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158
23 (1983), has determined that every municipality in a growth area has
24 a constitutional obligation to provide through its land use
25 regulations a realistic opportunity for a fair share of its region's
26 present and prospective needs for housing for low and moderate
27 income families.
- 28 b. In the second Mount Laurel ruling, the Supreme Court stated
29 that the determination of the methods for satisfying this
30 constitutional obligation "is better left to the Legislature," that the
31 court has "always preferred legislative to judicial action in their
32 field," and that the judicial role in upholding the Mount Laurel
33 doctrine "could decrease as a result of legislative and executive
34 action."
- 35 c. The interest of all citizens, including low and moderate
36 income families in need of affordable housing, and the needs of the
37 workforce, would be best served by a comprehensive planning and
38 implementation response to this constitutional obligation.
- 39 d. There are a number of essential ingredients to a
40 comprehensive planning and implementation response, including
41 the establishment of reasonable fair share housing guidelines and
42 standards, the initial determination of fair share by officials at the
43 municipal level and the preparation of a municipal housing element,
44 State review of the local fair share study and housing element, and
45 continuous State funding for low and moderate income housing to
46 replace the federal housing subsidy programs which have been
47 almost completely eliminated.

- 1 e. [The State can maximize the number of low and moderate
2 income units provided in New Jersey by allowing its municipalities
3 to adopt appropriate phasing schedules for meeting their fair share,
4 so long as the municipalities permit a timely achievement of an
5 appropriate fair share of the regional need for low and moderate
6 income housing as required by the Mt. Laurel I and II opinions and
7 other relevant court decisions.] (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)
8
- 9 f. The State can also maximize the number of low and
10 moderate income units by creating new affordable housing and by
11 rehabilitating existing, but substandard, housing in the State.
12 Because the Legislature has determined, pursuant to P.L.2008, c.46
13 (C.52:27D-329.1 et al.), that [it is no longer appropriate or in
14 harmony with the Mount Laurel doctrine to permit] the transfer of
15 the fair share obligations among municipalities within a housing
16 region is no longer viable as a permanent solution to creating
17 affordable housing in municipalities, it is necessary and appropriate
18 to create a new program to create new affordable housing and to
19 foster the rehabilitation of existing, but substandard, housing.
- 20 g. Since the urban areas are vitally important to the State,
21 construction, conversion and rehabilitation of housing in our urban
22 centers should be encouraged. However, the provision of housing
23 in urban areas must be balanced with the need to provide housing
24 throughout the State for the free mobility of citizens.
- 25 h. The Supreme Court of New Jersey in its Mount Laurel
26 decisions demands that municipal land use regulations affirmatively
27 afford a reasonable opportunity for a variety and choice of housing
28 including low and moderate cost housing, to meet the needs of
29 people desiring to live there. While provision for the actual
30 construction of that housing by municipalities is not required, they
31 are encouraged but not mandated to expend their own resources to
32 help provide low and moderate income housing.
- 33 i. [Certain amendments to the enabling act of the Council on
34 Affordable Housing are necessary to provide guidance to the
35 council to ensure consistency with the legislative intent, while at the
36 same time clarifying the limitations of the council in its rulemaking.
37 Although the court has remarked in several decisions that the
38 Legislature has granted the council considerable deference in its
39 rulemaking, the Legislature retains its power and obligation to
40 clarify and amend the enabling act from which the council derives
41 its rulemaking power, from time to time, in order to better guide the
42 council.] (Deleted by amendment, P.L. , c. .) (pending before
43 the Legislature as this bill)
- 44 j. The Legislature finds that the use of regional contribution
45 agreements, which permits municipalities to transfer a certain
46 portion of their fair share housing obligation outside of the
47 municipal borders, should no longer be utilized after December 31,

1 2011 as a mechanism for the creation of affordable housing **[by the**
2 **council]**.

3 (cf: P.L. 2008, c.46, s.4)

4

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

7 4. As used in this act:

8 a. "Council" means the Council on Affordable Housing
9 established **[in this act]** by section 5 of P.L.1985, c.222 (C.52:27D-
10 305), [which shall have primary jurisdiction for the administration
11 of housing obligations in accordance with sound regional planning
12 considerations in this State] and, pursuant to section 1 of
13 P.L. , c. (C.) (pending before the Legislature as this bill)
14 subsequent to its effective date, the State Housing Commission.

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

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

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

36 e. **["Resolution of participation"** means a resolution adopted by
37 a municipality in which the municipality chooses to prepare a fair
38 share plan and housing element in accordance with this act.**]**
39 (Deleted by amendment, P.L. , c. .) (pending before the
40 Legislature as this bill)

41 f. "Inclusionary development" means a residential housing
42 development in which a substantial percentage of the housing units
43 are provided for a reasonable income range of 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] may be given
14 to approvals of development applications, real property transfers
15 and economic projections prepared by the State Planning
16 Commission established by sections 1 through 12 of P.L.1985,
17 c.398 (C.52:18A-196 et seq.).

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

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

32 m. "Very low income housing" means housing affordable
33 according to federal Department of Housing and Urban
34 Development or other recognized standards for home ownership
35 and rental costs and occupied or reserved for occupancy by
36 households with a gross household income equal to 30% or less of
37 the median gross household income for households of the same size
38 within the housing region in which the housing is located.
39 (cf: P.L.2008, c.46, s.5)

40

41 6. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended
42 to read as follows:

43 1. As used in this act:

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

1 "Commissioner" means the Commissioner of Community
2 Affairs.

3 "Council" means the Council on Affordable Housing created by
4 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,
5 pursuant to section 1 of P.L. , c. (C.) (pending before the
6 Legislature as this bill) subsequent to its effective date, the State
7 Housing Commission.

8 "Department" means the Department of Community Affairs.

9 "Housing region" means a housing region as determined by the
10 **【Council on Affordable Housing】** State Housing Commission
11 pursuant to section **【7 of P.L.1985, c.222 (C.52:27D-307)】** 14 of
12 P.L. , c. (C.) (pending before the Legislature as this bill).

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

24 "Register" means the Register of Housing Projects directed by
25 section 2 of this act to be established and maintained by the
26 commissioner.
27 (cf: P.L.1991, c.479, s.1)

28
29 7. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended
30 to read as follows:

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

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

42 (2) Desirability. Each project shall be evaluated with relation to
43 its probable effect in meeting the affordable housing needs of the
44 housing region in which it is to be located, in accordance with the
45 standards and criteria of the **【council】** State Housing Commission.
46 Consideration shall be given to (a) the number of affordable
47 dwelling units that the project would provide, (b) the proportion of
48 affordable units to the total number of units envisaged in the project

1 plan, (c) the distribution of those affordable units as between those
2 affordable to persons and families of low income and those of
3 moderate income, considered in relation to the needs of the housing
4 region, (d) appropriateness of the proposed tenure of the affordable
5 units, whether to be rental or owner-occupied, in relation to the
6 needs of the housing region, and (e) appropriateness of the proposed
7 distribution of units as to family size, in relation to the needs of the
8 housing region.

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

15 b. In developing the system of assigning and designating
16 priorities, and in evaluating individual projects for such assignment
17 and designation in the register, the commissioner shall consult with
18 the executive director of the agency and the executive **[director]**
19 secretary of the **[council]** State Housing Commission. The
20 **[council]** person having control over the project and the agency
21 shall promptly and fully supply the commissioner with all relevant
22 information necessary for the commissioner's timely and complete
23 fulfillment of the requirements of this act.

24 (cf: P.L.1991, c.479, s.3)

25
26 8. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended
27 to read as follows:

28 4. a. Any officer or employee of the department, including any
29 member, officer or employee of the agency **[or the council]**, who
30 receives from any person any solicitation, application, proposal or
31 communication of any kind, whether oral or in writing, aimed at
32 furthering the assistance of any project shall promptly report the
33 same to the commissioner. The report shall identify the person or
34 persons making such communication. If any such person is not
35 identified in the register in accordance with the requirements of
36 subsection b. of section 2 of this act, the report shall state the
37 person's relationship to the sponsor or developer of the project and
38 the capacity in which the person represents himself or herself to be
39 acting on behalf of the sponsor or developer; or if the person fails or
40 refuses to supply that information, the report shall so state.

41 b. The commissioner shall develop a procedure or procedures
42 by which reports required under subsection a. of this section shall
43 be made either to the commissioner directly or through such
44 administrative channels as the commissioner shall devise and direct.
45 Notwithstanding the provisions of subsection i. of section 4 of
46 P.L.1983, c.530 (C.55:14K-4) **[and subsection a. of section 5 of**
47 **P.L.1985, c.222 (C.52:27D-305)]**, the regulations adopted by the

1 commissioner in fulfillment of this subsection shall be of full force
2 and application on and within the agency [and the council]; and all
3 members, officers and employees of the agency [and council] shall
4 give full compliance with and obedience to the rules and orders of
5 the commissioner made in pursuance of his duties and
6 responsibilities under this act.

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

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

19

20 9. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to
21 read as follows:

22 10. A municipality's housing element shall be designed to
23 achieve the goal of access to affordable housing to meet present and
24 prospective housing needs, with particular attention to low and
25 moderate income housing, and shall contain at least:

26 a. An inventory of the municipality's housing stock by age,
27 condition, purchase or rental value, occupancy characteristics, and
28 type, including the number of units affordable to low and moderate
29 income households and substandard housing capable of being
30 rehabilitated, and in conducting this inventory the municipality
31 shall incorporate census tract data and shall have access, on a
32 confidential basis for the sole purpose of conducting the inventory,
33 to all necessary property tax assessment records and information in
34 the assessor's office, including but not limited to the property record
35 cards;

36 b. A projection of the municipality's housing stock, including
37 the probable future construction of low and moderate income
38 housing, for the next ten years, taking into account, but not
39 necessarily limited to, construction permits issued, approvals of
40 applications for development and probable residential development
41 of lands;

42 c. An analysis of the municipality's demographic
43 characteristics, including but not necessarily limited to, household
44 size, income level and age;

45 d. An analysis of the existing and probable future employment
46 characteristics of the municipality;

47 e. A determination of the municipality's present and
48 prospective fair share for low and moderate income housing and its

1 capacity to accommodate its present and prospective housing needs,
2 including its fair share for low and moderate income housing; and

3 f. A consideration of the lands that are most appropriate for
4 construction of low and moderate income housing and of the
5 existing structures most appropriate for conversion to, or
6 rehabilitation for, low and moderate income housing, including a
7 consideration of lands of developers who have expressed a
8 commitment to provide low and moderate income housing.

9 In accordance with section 76 of the "Municipal Land Use Law,"
10 P.L.1975, c.291 (C.40:55D-89) a municipality shall reexamine and
11 amend its housing element every six years.

12 (cf: P.L.2001, c.435, s.2)

13
14 10. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
15 read as follows:

16 11. a. In adopting its housing element, the municipality may
17 provide for its fair share of low and moderate income housing by
18 means of any technique or combination of techniques which provide
19 a realistic opportunity for the provision of the fair share, including
20 an inclusionary zoning ordinance required pursuant to section 17 of
21 P.L. , c. (C.) (pending before the Legislature as this bill).

22 The housing element shall contain an analysis demonstrating that it
23 will provide such a realistic opportunity, and the municipality shall
24 establish that its land use and other relevant ordinances have been
25 revised to incorporate the provisions for low and moderate income
26 housing. In preparing the housing element, the municipality shall
27 consider the following techniques for providing low and moderate
28 income housing within the municipality, as well as such other
29 techniques as may be published by the council or proposed by the
30 municipality:

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

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

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

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

46 (5) Donation or use of municipally owned land or land
47 condemned by the municipality for purposes of providing low and
48 moderate income housing;

- 1 (6) Tax abatements for purposes of providing low and moderate
2 income housing;
- 3 (7) Utilization of funds obtained from any State or federal
4 subsidy toward the construction of low and moderate income
5 housing;
- 6 (8) Utilization of municipally generated funds toward the
7 construction of low and moderate income housing; **[and]**
- 8 (9) The purchase of privately owned real property used for
9 residential purposes at the value of all liens secured by the property;
10 excluding any tax liens, notwithstanding that the total amount of
11 debt secured by liens exceeds the appraised value of the property,
12 pursuant to regulations promulgated by the Commissioner of
13 Community Affairs pursuant to subsection b. of section 41 of
14 P.L.2000, c.126 (C.52:27D-311.2);
- 15 (10) Acquiring State surplus property in the municipality for
16 affordable housing purposes for reduced consideration and less than
17 fair market value, as permissible under section 1 of P.L.1962, c.220
18 (C.52:31-1.1); and
- 19 (11) Utilization of funds obtained from any source for the
20 rehabilitation of existing substandard or dilapidated housing for
21 occupancy as low or moderate income housing.
- 22 b. The municipality may provide for a phasing schedule for the
23 achievement of its fair share of low and moderate income housing.
- 24 c. (Deleted by amendment, P.L.2008, c.46)
- 25 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
26 require a municipality to raise or expend municipal revenues in
27 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. A
46 municipality may provide compensatory zoning benefits to a
47 developer of an inclusionary development containing housing
48 reserved for occupancy by persons of low or moderate income, or

1 for occupancy as workforce housing, which shall be deemed an
2 incidental private advantage.

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

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

15 i. The [council] State Housing Commission, upon the
16 application of a municipality and a developer, may approve reduced
17 affordable housing set-asides, pursuant to section 21 of P.L. , c.
18 (C.) (pending before the Legislature as this bill) or increased
19 densities to ensure the economic feasibility of an inclusionary
20 development.

21 (cf: P.L.2008, c.46, s.15)

22
23 11. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to
24 read as follows:

25 12. a. Except as prohibited under P.L.2008, c.46 (C.52:27D-
26 329.1 et al.), a municipality may propose the transfer of up to 50%
27 of its fair share to another municipality within its housing region by
28 means of a contractual agreement into which two municipalities
29 voluntarily enter. A municipality may also propose a transfer by
30 contracting with the agency or another governmental entity
31 designated by the council if the council determines that the
32 municipality has exhausted all possibilities within its housing
33 region. A municipality proposing to transfer to another
34 municipality, whether directly or by means of a contract with the
35 agency or another governmental entity designated by the council,
36 shall provide the council with the housing element and statement
37 required under subsection c. of section 11 of P.L.1985, c.222
38 (C.52:27D-311), and shall request the council to determine a match
39 with a municipality filing a statement of intent pursuant to
40 subsection e. of this section. Except as provided in subsection b. of
41 this section, the agreement may be entered into upon obtaining
42 substantive certification under section 14 of P.L.1985, c.222
43 (C.52:27D-314), or anytime thereafter. The regional contribution
44 agreement entered into shall specify how the housing shall be
45 provided by the second municipality, hereinafter the receiving
46 municipality, and the amount of contributions to be made by the
47 first municipality, hereinafter the sending municipality.

1 b. A municipality which is a defendant in an exclusionary
2 zoning suit and which has not obtained substantive certification
3 pursuant to P.L.1985, c.222 may request the court to be permitted to
4 fulfill a portion of its fair share by entering into a regional
5 contribution agreement. If the court believes the request to be
6 reasonable, the court shall request the council to review the
7 proposed agreement and to determine a match with a receiving
8 municipality or municipalities pursuant to this section. The court
9 may establish time limitations for the council's review, and shall
10 retain jurisdiction over the matter during the period of council
11 review. If the court determines that the agreement provides a
12 realistic opportunity for the provision of low and moderate income
13 housing within the housing region, it shall provide the sending
14 municipality a credit against its fair share for housing to be
15 provided through the agreement in the manner provided in this
16 section. The agreement shall be entered into prior to the entry of a
17 final judgment in the litigation. In cases in which a final judgment
18 was entered prior to the date P.L.1985, c.222 takes effect and in
19 which an appeal is pending, a municipality may request
20 consideration of a regional contribution agreement; provided that it
21 is entered into within 120 days after P.L.1985, c.222 takes effect.
22 In a case in which a final judgment has been entered, the court shall
23 consider whether or not the agreement constitutes an expeditious
24 means of providing part of the fair share. [Notwithstanding this
25 subsection, no consideration shall be given to any regional
26 contribution agreement of which the council did not complete its
27 review and formally approve a recommendation to the court prior to
28 the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).]

29 c. Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1
30 et al.), regional contribution agreements shall be approved by the
31 council, after review by the county planning board or agency of the
32 county in which the receiving municipality is located. The council
33 shall determine whether or not the agreement provides a realistic
34 opportunity for the provision of low and moderate income housing
35 within convenient access to employment opportunities. The council
36 shall refer the agreement to the county planning board or agency
37 which shall review whether or not the transfer agreement is in
38 accordance with sound, comprehensive regional planning. In its
39 review, the county planning board or agency shall consider the
40 master plan and zoning ordinance of the sending and receiving
41 municipalities, its own county master plan, and the State
42 development and redevelopment plan. In the event that there is no
43 county planning board or agency in the county in which the
44 receiving municipality is located, the council shall also determine
45 whether or not the agreement is in accordance with sound,
46 comprehensive regional planning. After it has been determined that
47 the agreement provides a realistic opportunity for low and moderate
48 income housing within convenient access to employment

1 opportunities, and that the agreement is consistent with sound,
2 comprehensive regional planning, the council shall approve the
3 regional contribution agreement by resolution. All determinations
4 of a county planning board or agency shall be in writing and shall
5 be made within such time limits as the council may prescribe,
6 beyond which the council shall make those determinations and no
7 fee shall be paid to the county planning board or agency pursuant to
8 this subsection.

9 d. In approving a regional contribution agreement, the council
10 shall set forth in its resolution a schedule of the contributions to be
11 appropriated annually by the sending municipality. A copy of the
12 adopted resolution shall be filed promptly with the Director of the
13 Division of Local Government Services in the Department of
14 Community Affairs, and the director shall thereafter not approve an
15 annual budget of a sending municipality if it does not include
16 appropriations necessary to meet the terms of the resolution.
17 Amounts appropriated by a sending municipality for a regional
18 contribution agreement pursuant to this section are exempt from the
19 limitations or increases in final appropriations imposed under
20 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

21 e. The council shall maintain current lists of municipalities
22 which have stated an intent to enter into regional contribution
23 agreements as receiving municipalities, and shall establish
24 procedures for filing statements of intent with the council. No
25 receiving municipality shall be required to accept a greater number
26 of low and moderate income units through an agreement than it has
27 expressed a willingness to accept in its statement, but the number
28 stated shall not be less than a reasonable minimum number of units,
29 not to exceed 100, as established by the council. The council shall
30 require a project plan from a receiving municipality prior to the
31 entering into of the agreement, and shall submit the project plan to
32 the agency for its review as to the feasibility of the plan prior to the
33 council's approval of the agreement. The agency may recommend
34 and the council may approve as part of the project plan a provision
35 that the time limitations for contractual guarantees or resale controls
36 for low and moderate income units included in the project shall be
37 less than 30 years, if it is determined that modification is necessary
38 to assure the economic viability of the project.

39 f. The council shall establish guidelines for the duration and
40 amount of contributions in regional contribution agreements. In
41 doing so, the council shall give substantial consideration to the
42 average of: (1) the median amount required to rehabilitate a low and
43 moderate income unit up to code enforcement standards; (2) the
44 average internal subsidization required for a developer to provide a
45 low income housing unit in an inclusionary development; (3) the
46 average internal subsidization required for a developer to provide a
47 moderate income housing unit in an inclusionary development.
48 Contributions may be prorated in municipal appropriations

1 occurring over a period not to exceed ten years and may include an
2 amount agreed upon to compensate or partially compensate the
3 receiving municipality for infrastructure or other costs generated to
4 the receiving municipality by the development. Appropriations
5 shall be made and paid directly to the receiving municipality or
6 municipalities or to the agency or other governmental entity
7 designated by the council, as the case may be.

8 g. The council shall require receiving municipalities to file
9 annual reports with the agency setting forth the progress in
10 implementing a project funded under a regional contribution
11 agreement, and the agency shall provide the council with its
12 evaluation of each report. The council shall take such actions as
13 may be necessary to enforce a regional contribution agreement with
14 respect to the timely implementation of the project by the receiving
15 municipality.

16 **[No]** Except as otherwise provided in this section, no
17 consideration shall be given to any regional contribution agreement
18 for which the council did not complete its review and grant
19 approval prior to the effective date of P.L.2008, c.46 (C. 52:27D-
20 329.1 et al.).

21 h. (1) Notwithstanding any law, rule or regulation to the
22 contrary, the State Housing Commission shall, prior to or on
23 December 31, 2011, review and either grant approval to or
24 disapprove any regional contribution agreement when the sending
25 municipality, prior to July 17, 2008, by resolution, authorized the
26 execution of a regional contribution agreement and the resolution
27 identifies a proposed number of units to be credited to the sending
28 municipality.

29 (2) When reviewing a regional contribution agreement pursuant
30 to this subsection, the State Housing Commission shall apply the
31 regulations of the Council on Affordable Housing in effect at the
32 time agreement was entered into.

33 (cf. P.L.2008, c.46, s.16)

34
35 12. Section 12 of P.L.2008, c.46 (C.52:27D-329.6) is amended
36 to read as follows:

37 12. The Legislature finds and declares that:

38 a. The transfer of a portion of the fair share obligations among
39 municipalities has proven to not be a viable method of ensuring that
40 an adequate supply and variety of housing choices are provided in
41 municipalities experiencing growth. Therefore, the use of a
42 regional contribution agreement shall no longer be permitted under
43 P.L.1985, c.222 (C.52:27D-301 et al.), except as permitted pursuant
44 to subsection h. of section 12 of P.L.1985, c.222 (C.52:27D-312).

45 b. **[Although the elimination of the regional contribution**
46 **agreement as a tool for the production of affordable housing**
47 **pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on**
48 **some proposed agreements awaiting approval it is for a public**

1 purpose and for the public good that such contracts be declared void
2 for the current and future housing obligation rounds.】 (Deleted by
3 amendment, P.L. , c. .) (pending before the Legislature as this
4 bill)

5 c. There is a need to assist municipalities in the rehabilitation
6 of housing for occupancy by low and moderate income households.
7 To this end, a specific program for housing rehabilitation by
8 municipalities would best serve this need. It is the intent of the
9 Legislature that this program, as well as funds earmarked for the
10 purposes of the program, will be utilized, especially in urban areas
11 which were the main recipients of regional contribution agreements,
12 to continue to upgrade housing stock in order to provide a wide
13 variety and choice of housing for persons living in those areas.

14 d. There is also a need to provide funding to municipalities to
15 create additional incentives and assistance for the production of
16 safe, decent, and affordable rental and other housing.

17 (cf: P.L.2008, c.46, s.12)

18
19 13. (New section) As used in P.L. , c. (C.):

20 "Commission" means the State Housing Commission, established
21 pursuant to section 24 of P.L.1985, c.398 (C.52:27D-329.13), that
22 shall have primary jurisdiction for the administration of housing
23 obligations in accordance with sound regional planning
24 considerations in this State.

25 "Inclusionary development" means a residential housing
26 development in which a substantial percentage of the housing units
27 are provided for low income, moderate income and workforce
28 housing.

29 "Inclusionary unit" means a dwelling unit for sale or for rent that
30 is low income or moderate income or workforce housing as part of
31 an inclusionary development pursuant to an ordinance adopted
32 pursuant to section 17 of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34 "Inclusionary ordinance" means an ordinance adopted by a
35 municipality that encourages or requires real estate developers to
36 set aside residential dwelling units as low income, moderate income
37 or workforce housing when developing real estate.

38 "Variety and choice of housing" means at that a municipality has
39 planned accordingly for its housing stock to offer sufficient
40 opportunity to provide a reasonable opportunity for price-restricted
41 low and moderate income housing.

42 "Workforce housing" means housing affordable to, according to
43 federal Department of Housing and Urban Development or other
44 recognized standards for home ownership and rental costs, and
45 occupied by, or reserved for occupancy by, households with a gross
46 household income equal to more than 80 percent but less than 120
47 percent of the median gross household income for households of the
48 same size within the housing region in which the housing is located,

1 and that may be reserved for occupancy by households with at least
2 one member working in the municipality or living in the
3 municipality.

4
5 14. (New section) It shall be the duty of the State Housing
6 Commission to administer the "Fair Housing Act," P.L.1985, c.222
7 (C.52:27D-301 et al.), as substantially amended by
8 P.L. , c. (C.) (pending before the Legislature as this bill), and
9 to assist municipalities that are developing in fulfilling their
10 obligation to provide an appropriate variety and choice of housing,
11 including housing for low- and moderate-income families. The
12 commission shall:

13 a. Determine the housing regions of the state, for the use and
14 information of municipalities;

15 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
16 c.410 (C.52:14B-1 et seq.), promulgate guidelines and criteria for
17 housing elements prepared pursuant to section 19 of the "Municipal
18 Land Use Law," P.L.1975, c.291 (C.40:55D-28) and section 10 of
19 the "Fair Housing Act," P.L. 1985, c.222 (C.52:27D-310);

20 c. Pursuant to the "Administrative Procedure Act," P.L.1968,
21 c.410 (C.52:14B-1 et seq.), promulgate guidelines and criteria for
22 and review municipal ordinances of compliance adopted pursuant to
23 section 16 of P.L. , c. (C.) (pending before the Legislature
24 as this bill) in accordance with the procedures provided therein; and

25 d. Develop standards and guidelines for an inclusionary
26 ordinance for those municipalities required to adopt an inclusionary
27 ordinance pursuant to section 17 of P.L. , c. (C.) (pending
28 before the Legislature as this bill).

29
30 15. (New section) The commission shall not adopt any rule or
31 regulation requiring a municipality to provide an opportunity for a
32 specific number of units attributable to prospective need as
33 estimated by the municipality or commission. Nothing in this
34 section shall modify any requirement that a municipality afford the
35 opportunity for housing that satisfies the municipality's fair share of
36 the prospective need for housing affordable to low- and moderate-
37 income households in the housing region.

38
39 16. (New section) a. The governing body of a municipality
40 adopting a housing element pursuant to section 10 of P.L.1985,
41 c.222 (C.52:27D-310) and completing the general reexamination of
42 its master plan pursuant to section 76 of P.L.1975, c.291
43 (C.40:55D-89) may adopt an ordinance determining that it has
44 complied with its obligation pursuant to the "Fair Housing Act,"
45 P.L.1985, c.222 (C.52:27D-301 et al.) to provide an opportunity for
46 an appropriate variety of housing choice within the municipality for
47 the six-year housing round period.

1 b. An ordinance adopted pursuant to subsection a. of this
2 section shall be based on a model ordinance, or other standards and
3 criteria promulgated by the State Housing Commission pursuant to
4 section 14 of P.L. , c. (C.) (pending before the Legislature
5 as this bill). A determination of compliance shall be based upon a
6 municipality's existing housing stock, census data, and historical
7 compliance with the regulations of the Council on Affordable
8 Housing promulgated pursuant to the "Fair Housing Act," P.L.1985,
9 c.222 (C.52:27D-301 et al.). There shall be a rebuttable
10 presumption of validity attaching to the ordinance.

11 c. Any person may file with the State Housing Commission an
12 objection to an ordinance adopted by the governing body of a
13 municipality pursuant to subsection a. of this section. Any action
14 taken by the commission concerning the objection shall be a final
15 agency decision subject to review by the Appellate Division of the
16 Superior Court.

17

18 17. (New section) a. A municipality that has not adopted an
19 ordinance pursuant to section 16 of P.L. , c. (C.) (pending
20 before the Legislature as this bill), shall adopt a specific
21 inclusionary ordinance requiring that one out of every five
22 residential housing units proposed for construction as part of a
23 residential development project resulting in two or more dwelling
24 units be reserved for occupancy as low income, moderate income or
25 workforce housing.

26 b. The ordinance shall provide that residential developments
27 resulting in a fractional units reserved for occupancy by low- and
28 moderate-income families, shall, if such fractional unit will not be
29 constructed, make a payment in lieu of construction into a
30 municipal trust fund established by a municipality authorized to
31 collect development fees pursuant to section 8 of P.L.2008, c.46
32 (C.52:27D-329.2) or, if not so authorized, into the New Jersey
33 Affordable Housing Trust Fund established pursuant to section 20
34 of P.L.1985, c.222 (C.52:27D-320). The commission shall
35 promulgate guidelines for payments in lieu of construction,
36 including guidelines for the collection, spending and calculations of
37 payments on account of fractional dwelling units, in accordance
38 with the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.).

40 c. To encourage and stimulate the provision of opportunities
41 for affordable housing as well as to make market-rate residential
42 development financially viable for residential developers, an
43 ordinance adopted pursuant to this section shall authorize indirect
44 and direct economic incentives to any person engaging in a
45 development project, including, but not limited to:

46 (1) Density bonuses;

47 (2) Streamlining local government permitting processes or
48 project review where available;

- 1 (3) Fee waivers;
- 2 (4) Alternate design standards for affordable units;
- 3 (5) Permitting the required inclusionary units to be newly
- 4 constructed off-site;
- 5 (6) Permitting the required inclusionary units to be provided off
- 6 site by rehabilitation of existing substandard units; and
- 7 (7) Permitting a developer to pay a fee in lieu of constructing a
- 8 portion of the inclusionary units into a municipal trust fund for the
- 9 construction of affordable housing.
- 10 d. Nothing in this section shall preclude a municipality from
- 11 imposing inclusionary requirements upon redevelopment or
- 12 rehabilitation projects, condominium conversions, or any form of
- 13 infill development or adaptive reuse of a residential development
- 14 project.
- 15 For purposes of this section, "residential development project"
- 16 means new construction resulting in the production of residential
- 17 dwelling units, including single family home subdivisions or re-
- 18 subdivisions, or new construction on a project resulting in two or
- 19 more dwelling units, whether attached or detached, on a single
- 20 parcel of real property.
- 21
- 22 18. (New section) At least 25 percent of the units required to be
- 23 provided pursuant to an ordinance adopted pursuant to section 17 of
- 24 P.L. , c. (C.) (pending before the Legislature as this bill)
- 25 shall be low income housing. At least 25 percent of the units
- 26 required to be provided pursuant to an ordinance adopted pursuant
- 27 to section 17 of P.L. , c. (C.) (pending before the Legislature
- 28 as this bill) shall be moderate income housing. At least 25 percent
- 29 of the units required to be provided pursuant to an ordinance
- 30 adopted pursuant section 17 of P.L. , c. (C.) (pending before
- 31 the Legislature as this bill) shall be workforce housing, and may be
- 32 reserved for households that have at least one member who works
- 33 or resides in the municipality, or works within a 10-mile radius of
- 34 the outer boundaries of the municipality.
- 35
- 36 19. (New section) A municipal ordinance adopted pursuant to
- 37 section 17 of P.L. , c. (C.) (pending before the Legislature
- 38 as this bill) shall not require any restrictions on the subsequent
- 39 resale price of a workforce housing unit following the initial sale
- 40 from a developer, provided that the seller of the workforce housing
- 41 has maintained the home as a primary residence for at least six
- 42 years prior to its resale.
- 43
- 44 20. (New section) a. In each municipality of the State that has
- 45 not adopted an ordinance pursuant to section 16 of
- 46 P.L. , c. (C.) (pending before the Legislature as this bill) and
- 47 that has not adopted a specific inclusionary ordinance pursuant to
- 48 section 17 of P.L. , c. (C.), or for which there is

1 demonstrated evidence that the municipality has taken affirmative
2 exclusionary zoning action, when a proposed inclusionary
3 development requires approval pursuant to this act of a subdivision,
4 site plan or conditional use, or a variance, including a variance
5 pursuant to subsection d. of section 57 of P.L.1975, c.291
6 (C.40:55D-70), the board of adjustment or the use board, as
7 appropriate, shall review the request for a subdivision, site plan or
8 conditional use, or a variance, and the inclusionary development
9 shall be deemed to be an inherently beneficial and the developer
10 shall only be required to make a showing, consistent with section 57
11 of P.L.1975, c.291 (C.40:55D-70) that the variance or other relief
12 can be granted without substantial detriment to the public good and
13 will not substantially impair the intent and purpose of the zone plan
14 and zoning ordinance.

15

16 21. (New section) a. A municipality and the developer of an
17 inclusionary development may jointly apply to the State Housing
18 Commission for a site-specific adjustment to the affordable housing
19 set-aside required by an ordinance adopted pursuant to section 17 of
20 P.L. , c. (C.) (pending before the Legislature as this bill) if it
21 is believed that a project will not be economically feasible if
22 required to comply with a municipal inclusionary zoning ordinance
23 adopted pursuant to section 17 of P.L. , c. (C.) (pending
24 before the Legislature as this bill).

25 b. An application for an adjustment shall demonstrate that the
26 proposed development and residential, inclusionary use of the site
27 are indispensable components of a municipal response to the
28 municipality's housing obligation. The application for an
29 adjustment shall contain a pro forma that includes details of the
30 project plan and financial analysis, including the yield required for
31 financing and to secure a mortgage, and an analysis of the burden of
32 applicable development regulations and ordinance's effect on the
33 project's financial viability.

34 c. The State Housing Commission shall have 90 days to review
35 the application for an adjustment and shall provide, in writing, a
36 determination containing an evaluation. The State Housing
37 Commission shall consider the financing received by the
38 inclusionary development, including loans, grants or other financial
39 aid administered by the department, including programs
40 administered by the agency, any assistance received from the New
41 Jersey Affordable Housing Trust Fund established pursuant to
42 section 20 of P.L.1985, c.222 (C.52:27D-320) or a municipal trust
43 fund established pursuant to subsection c. of section 35 of P.L.2008,
44 c.46 (C.40:55D-8.4), and any other source of financial assistance,
45 including by not limited to assistance received from any other
46 instrumentality of the State or the United States government. The
47 State Housing Commission may consult with any other State agency
48 concerning its evaluation. The commission's determination may

1 include a suggested site-specific adjustment for the project, which
2 may include a change in density, set-asides, or reserved units for
3 low or moderate income occupants.

4 d. The State Housing Commission shall transmit its
5 determination to the appropriate municipal agency, which shall
6 grant relief necessary to implement the adjustment to the
7 development's set-aside.

8 e. Notwithstanding any adjustment made pursuant to this
9 section, not less than 10 percent of the housing units in any
10 proposed inclusionary development shall be reserved for occupancy
11 by low or moderate income occupants.

12 f. Any party may appeal a determination made by the State
13 Housing Commission concerning a site-specific adjustment to the
14 Superior Court.

15 g. The State Housing Commission, in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), shall adopt rules and regulations to implement the provisions
18 of this section.

19

20 22. (New section) a. The court shall grant repose from
21 exclusionary zoning lawsuits to a municipality that has adopted an
22 ordinance pursuant to section 16 of P.L. , c. (C.), or has
23 adopted a specific inclusionary ordinance in accordance with
24 section 17 of P.L. , c. (C.) (pending before the Legislature
25 as this bill) and can affirmatively demonstrate to the court
26 continued enforcement of such an ordinance since its adoption,
27 regardless of whether the municipality has petitioned or filed an
28 affordable housing plan with any State agency for the housing
29 period beginning 2004.

30 b. This section shall not apply to a municipality subject to a
31 court order to provide affordable housing prior to the adoption of an
32 ordinance required pursuant to P.L. , c. (C.) (pending
33 before the Legislature as this bill).

34 c. Any land that, by ordinance, was planned for, or reserved for
35 purposes of satisfying a municipality's fair share of the region's
36 housing opportunities pursuant to N.J.A.C.5:92, the regulations of
37 the Council on Affordable Housing for the housing round beginning
38 on August 4, 1986 or N.J.A.C.5:93, the regulations of the Council
39 on Affordable Housing for the housing round beginning June 6,
40 1994, shall be excluded from any calculations concerning variety
41 and choice of housing, pursuant to section 16 of P.L. , c (C.)
42 (pending before the Legislature as this bill) and the requirements of
43 any specific inclusionary zoning ordinance adopted pursuant to
44 section 17 of P.L. , c (C.) (pending before the Legislature as
45 this bill).

46 d. For any litigation involving exclusionary zoning instituted
47 prior to the effective date of P.L. , c (C.) (pending before the
48 Legislature as this bill) jurisdiction may remain with the court.

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

7
8 24. Section 24 of P.L.2008, c. 46 (C.52:27D-329.13) is amended
9 to read as follows:

10 24. a. The State Housing Commission is created and established
11 in the Executive Branch of the State Government. For the purposes
12 of complying with the provisions of Article V, Section IV,
13 paragraph 1 of the New Jersey Constitution, the commission is
14 allocated within the Department of Community Affairs, but
15 notwithstanding this allocation, the commission shall be
16 independent of any supervision or control by the department except
17 as expressly authorized under P.L.2008, c.46 (C.52:27D-329.1 et
18 al.). The commission shall consist of 15 public members and shall
19 also include the Commissioner of Community Affairs, the
20 Commissioner of Environmental Protection, the Commissioner of
21 Human Services, the Commissioner of Transportation, the
22 Commissioner of Education, the Chairman of the State Planning
23 Commission, and the State Treasurer, who shall be nonvoting, ex-
24 officio members of the commission. The non-public members may
25 each designate a qualified employee to serve in their stead.

26 Thirteen of the public members shall be appointed by the
27 Governor with the advice and consent of the Senate as follows:
28 four members shall be individuals qualified by expertise in housing
29 preservation, development, and management and who do not hold
30 public office or public employment, and one of the four shall have
31 particular experience in addressing the needs of the homeless; two
32 of the four members shall be individuals qualified by expertise in
33 urban revitalization and redevelopment and who do not hold public
34 office, one of whom shall be a nonprofit builder, and another
35 member of the four shall be a for-profit developer; two members
36 shall be elected local officials at the time of initial appointment, one
37 of whom shall be an elected official in a municipality having a
38 population greater than 50,000; two members shall be individuals
39 who do not hold public office and are qualified by their position and
40 experience to represent the interests of low and moderate income
41 and middle income families and individuals; one member shall be
42 an individual who does not hold public office and who is qualified
43 by expertise in planning and land use, one member who does not
44 hold public office shall be a licensed real estate broker or a licensed
45 real estate salesperson, and one member who shall be an executive
46 director of a public housing authority within the State. Two
47 additional public members who do not hold public office or public
48 employment shall be appointed as follows: one member by the

1 Speaker of the General Assembly and one member by the President
2 of the Senate. The public members of the commission shall reflect
3 the diversity of housing sector professionals.

4 b. The Governor shall nominate 13 public members of the
5 commission, within 90 days following the effective date of
6 P.L.2008, c.46 (C.52:27D-329.1 et al.), and shall designate a public
7 member to preside over the commission until a chair and vice-chair
8 are elected by the members of the commission. The Speaker of the
9 General Assembly and the President of the Senate shall each
10 appoint a member, respectively, within 90 days following the
11 effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).

12 c. Each public member of the commission shall serve for a
13 term of three years, except that of the initial members so appointed:
14 three members appointed by the Governor shall serve for terms of
15 one year; one member appointed by the President of the Senate, one
16 member appointed by the Speaker of the General Assembly and five
17 members appointed by the Governor shall serve for terms of two
18 years; and the remaining appointees shall serve for terms of three
19 years. Public members shall be eligible for reappointment. They
20 shall serve until their successors are appointed and qualified, and
21 the term of the successor of any incumbent shall be calculated from
22 the expiration of the term of that incumbent. A vacancy occurring
23 other than by expiration of term shall be filled in the same manner
24 as the original appointment, but for the unexpired term only.

25 The members of the commission shall serve without
26 compensation, but shall be entitled to reimbursement for all
27 necessary expenses incurred in the performance of their duties.
28 Each member of the commission may be removed from office by
29 the Governor, for cause, upon notice and opportunity to be heard.

30 d. The commission shall elect annually a chair and vice-chair
31 from among the public members of the commission, who shall serve
32 for one year and until a successor is elected.

33 e. The executive secretary of the commission shall be the
34 Senior Deputy Commissioner for Housing. In the event the
35 commissioner designates the Senior Deputy Commissioner for
36 Housing to serve in his or her stead as a member of the commission,
37 the Senior Deputy Commissioner for Housing shall designate a
38 qualified employee of the department to serve as executive
39 secretary of the commission. Eight of the voting members of the
40 commission shall constitute a quorum and a vote of the majority of
41 the members present shall be necessary for any action taken by the
42 commission.

43 f. The duties of the commission shall be as follows:

44 (1) To provide guidance and direction with respect to the
45 policies and strategies to be pursued by State agencies with respect
46 to housing which are incorporated into the plan.

47 (2) To prepare and adopt the Annual Strategic Housing Plan as
48 set forth in section 28 of P.L.2008, c.46 (C.52:27D-329.17).

1 (3) To hold such public hearings and other activities as may be
2 desirable to ensure adequate public input into the preparation of the
3 plan and increase public awareness of the strategies and activities
4 contained in the plan.

5 (4) To gather and disseminate such information on housing
6 needs and strategies as may be useful for the work of the
7 commission and informative to the public.

8 (5) To assume the duties of the Council on Affordable Housing
9 which are transferred to the commission, as well as such other
10 duties, as provided in sections 14 and 15 of P.L. , c. (C.)
11 (pending before the Legislature as this bill).

12 (cf: P.L.2008, c.46, s.24)

13
14 25. Section 26 of P.L.2008, c.46 (C.52:27D-329.15) is amended
15 to read as follows:

16 26. a. An interdepartmental working group is established for the
17 purpose of supporting the activities of the commission and its
18 preparation of the draft plan.

19 b. The membership of the working group shall consist of the
20 commissioners or executive directors of the following departments
21 or agencies of State government: the Department of Community
22 Affairs, **the Council on Affordable Housing,** the New Jersey
23 Economic Development Authority, the New Jersey Housing and
24 Mortgage Finance Agency, the Department of Human Services, the
25 Department of Children and Families, the Department of Health and
26 Senior Services, the Public Advocate, the Department of Education,
27 the Department of Environmental Protection, the Department of
28 Transportation, the Office of Smart Growth, the Department of the
29 Treasury, the Highlands Council, the Pinelands Commission, and
30 the New Jersey Meadowlands Commission.

31 c. The Commissioner of Community Affairs may appoint the
32 Senior Deputy Commissioner for Housing as his or her
33 representative to serve on the working group.

34 d. Each other commissioner or executive director may appoint
35 a representative to serve on the working group, who shall be a
36 senior employee of the department or agency with substantial
37 background, experience, or training relevant to the mission of the
38 working group.

39 e. The working group shall be chaired by the Commissioner of
40 Community Affairs or by the Senior Deputy Commissioner for
41 Housing as the commissioner's designee, if so appointed.

42 f. Meetings of the working group shall be called by the chair as
43 needed during the course of preparation of the plan or the annual
44 performance report.

45 g. Each department or agency constituting the working group
46 shall make available such personnel and information as may be
47 necessary to enable the working group to perform its

1 responsibilities.
2 (cf: P.L.2008, c.46, s.26)

3
4 26. The following sections are repealed:
5 Section 5 of P.L.1985 c.222 (C.52:27D-305);
6 Section 6 of P.L.1985, c.222 (C.52:27D-306);
7 Section 7 of P.L.1985, c.222 (C.52:27D-307);
8 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
9 Section 8 of P.L.1985, c.222 (C.52:27D-308);
10 Section 9 of P.L.1985, c.222 (C.52:27D-309);
11 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
12 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
13 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
14 Section 6 of P.L.2005, c.350 (C.52:27D-311b);
15 Section 13 of P.L.1985 c.222 (C.52:27D-313);
16 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
17 Section 14 of P.L.1985 c.222 (C.52:27D-314);
18 Section 15 of P.L.1985 c.222 (C.52:27D-315);
19 Section 16 of P.L.1985, c.222 (C.52:27D-316);
20 Section 17 of P.L.1985, c.222 (C.52:27D-317);
21 Section 18 of P.L.1985, c.222 (C.52:27D-318); and
22 Section 19 of P.L.1985 c.222 (C.52:27D-319)

23
24 27. This act shall take effect immediately.

25
26

27 STATEMENT

28

29 This bill reforms this State's affordable housing laws. If enacted,
30 this legislation would abolish the Council on Affordable Housing
31 established pursuant to the "Fair Housing Act," N.J.S.A.52:27D-301
32 et al., and would allow municipalities to administer their own
33 affordable housing obligations. The bill would do away with State-
34 imposed calculations of municipal affordable housing need and
35 would permit local governments to take charge of planning for
36 opportunities for affordable housing. This bill charges the State
37 Housing Commission with assisting municipalities in facilitating
38 opportunities for affordable housing.

39 If enacted, this legislation would abolish the Council on
40 Affordable Housing, and transfer any remaining authority of the
41 council to the State Housing Commission. This bill amends the
42 findings and declarations sections of the "Fair Housing Act" to
43 eliminate references to the Council on Affordable Housing. In
44 addition, this bill repeals the sections of law establishing the
45 council.

46 To transfer responsibility for affordable housing planning to
47 municipalities, this legislation would amend the "Municipal Land
48 Use Law," N.J.S.A.40:55D-1 et seq. to make a housing element a

1 mandatory part of a municipal master plan. In addition, to promote
2 stability and predictability for municipal planning purposes, this bill
3 amends the State Planning Act to provide that the State
4 Development and Redevelopment Plan, like a municipal master
5 plan, is readopted only every six years.

6 In order to ease the pressure for municipalities to meet affordable
7 housing goals, this bill would permit certain regional contribution
8 agreements ("RCAs") formed before the effective date of P.L.2008,
9 c.46 to be reviewed and approved through the end of 2011. These
10 incomplete RCAs would be reviewed and governed by the rules of
11 the council in effect at the time the agreements were entered into.
12 Completion of these RCAs could allow the production of
13 opportunities for as many as 5,000 units and the transfer of up \$116
14 million to urban municipalities for rehabilitation and
15 redevelopment.

16 The State Housing Commission would be required, by December
17 31, 2011, to review agreements between municipalities that took
18 steps to enter into RCAs before July 17, 2008. The commission
19 would be required to approve or disapprove agreements where
20 municipalities had adopted resolutions of intent to execute an
21 agreement.

22 Municipalities, following a general reexamination of their master
23 plan and housing element, would be required to adopt an ordinance
24 providing that have determined that they have provided an
25 opportunity for an appropriate variety and choice of housing and
26 have complied with their obligations under the "Fair Housing Act."

27 This bill would require those municipalities that do not adopt an
28 ordinance determining compliance, to adopt a specific inclusionary
29 zoning ordinance. Inclusionary zoning is a technique that insures
30 that low and moderate income, and workforce housing is built
31 whenever market rate units are developed. Under this legislation, a
32 specific municipal inclusionary zoning ordinance would require
33 developers to set aside 20 percent of the proposed units in a
34 residential development for low- and moderate-income households
35 and for workforce housing. Although inclusionary zoning
36 ordinances can be cumbersome, this legislation requires the
37 ordinance to provide for indirect economic incentives to a
38 developer. These incentives include payments in lieu of
39 construction, off-site construction, and alternate design standards
40 for residential development projects that include affordable units.
41 This legislation permits municipalities to tailor the incentives to
42 their specific needs for encouraging development.

43 In addition to authorizing municipalities to grant economic
44 incentives to developers, this legislation would add additional
45 language to section 11 of the "Fair Housing Act," N.J.S.A.52:27D-
46 311, to emphasize that the rehabilitation of existing dwelling units
47 and the employment of surplus State property are techniques which
48 provide a realist opportunity for the provision of low and moderate

1 income housing. The bill specifies that compensatory zoning
2 benefits given to a developer of an inclusionary development which
3 includes workforce housing units will be deemed to be incidental
4 private benefits, since the benefits assist the developer in the overall
5 goal of providing affordable housing.

6 If a municipality does not comply with the ordinance procedure
7 and does not adopt a specific inclusionary zoning ordinance, the bill
8 makes available an alternate variance procedure to ensure provision
9 of opportunities for affordable units. Under the provisions of the
10 bill, a proposed inclusionary development seeking a variance is
11 deemed to be inherently beneficial, and thus to have satisfied the
12 "positive" criteria for a d. variance pursuant to section 70 of the
13 "Municipal Land Use Law." The alternate variance procedure
14 would not be available in a municipality that has adopted an
15 ordinance determining compliance or has adopted a specific
16 inclusionary zoning ordinance.

17 Because of the current economic situation, this legislation also
18 provides that developers can seek site-specific adjustments of set-
19 asides based on economic feasibility. Jointly with a municipality, a
20 developer would apply to the State Housing Commission for a
21 review of the pro forma and other documentation. In no event
22 would less than 10 percent of the units in an inclusionary
23 development be moderate income, low income or workforce
24 housing under the adjustment.

25 This bill also amends the Fair Housing Act to prevent the State
26 from calculating prospective need, in line with the original Mt.
27 Laurel decision, which held that projected affordable housing
28 "need" numbers were not specifically required and in consideration
29 of the mandatory growth share ordinances which will be adopted by
30 many municipalities. This bill also forgives unmet housing need
31 from prior rounds or periods in time before the effective date of the
32 act. The bill also adds the executive director of the New Jersey
33 Redevelopment Authority to the steering workgroup of the State
34 Housing Commission.