

[First Reprint]

ASSEMBLY, No. 3447

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

Sponsored by:

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblywoman MILA M. JASEY

District 27 (Essex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on November 8, 2010, with amendments.



(Sponsorship Updated As Of: 11/9/2010)

1 AN ACT concerning affordable housing and revising and
2 supplementing 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 Legislature finds and declares that:

8 a. In 1975, the New Jersey Supreme Court determined that
9 municipalities may not validly employ their zoning powers to
10 prevent the creation of a variety and choice of housing
11 opportunities. In response, the Legislature established the "Fair
12 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), which has
13 resulted in a complex system of administration that micromanages
14 all types of development, including market rate- and low- and
15 moderate-income residential development, as well as commercial,
16 retail, and industrial growth through a determination of each region
17 and municipality's housing needs based on difficult to predict and
18 fallible population and job growth projections.

19 b. The Legislature further finds that this approach has not
20 resulted in the creation of housing opportunities for all categories of
21 the State's citizens. During first 35 years of the "Fair Housing
22 Act's" existence, this complex system of regulation has resulted in
23 scores of lawsuits and court decisions, and the unnecessary
24 expenditure of millions of dollars by municipalities, developers, and
25 the State. In 2010, the system remains tied up with multiple legal
26 challenges, preventing the creation of housing opportunities within
27 the State.

28 c. It is incumbent on the State's elected officials to develop a
29 new approach that will result in the creation, through zoning
30 requirements, of a realistic opportunity for a variety and choice of
31 housing for low- and moderate-income families in each
32 municipality of the State, in consideration of regional and Statewide
33 needs for affordable housing. The welfare of the public requires a
34 new approach that does not waste the limited resources needed to
35 fulfill government's many functions, including public safety, health
36 care, education and environmental protection, ensuring the
37 affordability of mass transit, protection of civil rights, promotion of
38 economic growth, and job creation.

39 d. A simple, rather than complex, system that maximizes the
40 ability of the free market to produce a variety and choice of housing
41 will most effectively provide housing opportunities for the low- and
42 moderate-income residents of New Jersey. To ensure that New
43 Jersey is an affordable, appealing home for all the State's residents,
44 municipalities must have clear and realistic standards to guide
45 municipal action.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted November 8, 2010.

1 e. Municipalities that already have a healthy mix of housing
2 should not be encumbered with State zoning mandates that are
3 needed to create an opportunity for an appropriate variety and
4 choice of housing in municipalities where a reasonable mix of
5 housing does not already exist.

6 f. By requiring those municipalities not already having a
7 reasonable mix of housing to comply with the zoning mandates
8 established hereunder, the State will maximize the opportunity for
9 variety and choice of housing in those municipalities without
10 wasting limited resources necessary to provide for the other
11 governmental functions stated herein, which only represent some,
12 but not all, of government's responsibility to provide for the general
13 welfare of its residents

14 g. It is the public policy of this State to encourage the well-
15 organized production of low- and moderate-income housing to
16 serve the general welfare of all the State's residents by
17 implementing a clear, intelligible regulatory system.

18
19 2. (New section) The Council on Affordable Housing
20 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
21 301 et al.) is abolished, and all of its powers, functions, and duties
22 that are not repealed herein are continued in the Department of
23 Community Affairs, established pursuant to section 1 of P.L.1966,
24 c.293 (C.52:27D-1), except as herein otherwise provided.
25 Whenever, in any law, rule, regulation, order, contract, document,
26 judicial or administrative proceeding, or otherwise, reference is
27 made to the Council on Affordable Housing, the same shall mean
28 and refer to the Department of Community Affairs. All
29 appropriations and other moneys available, and to become
30 available, to the Council on Affordable Housing are hereby
31 continued in the Department of Community Affairs, and shall be
32 available for the objects and purposes for which such moneys are
33 appropriated, subject to any terms, restriction, limitations, or other
34 requirements imposed by State or federal law.

35 To effectuate this transfer there shall also be transferred all
36 necessary records and papers of the Council on Affordable Housing.

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

39
40 '3. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to
41 read as follows:

42 25. a. The **【Council on Affordable Housing】** department shall
43 take into consideration the regional master plan prior to making any
44 determination **【regarding the allocation of the prospective fair share**
45 **of the housing need in】**, or promulgating any regulation specifically
46 concerning, any municipality in the Highlands Region under the

1 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) [for the
2 fair share period subsequent to 1999].

3 b. Nothing in this act shall affect protections provided through
4 a grant of substantive certification or a judgment of repose granted
5 prior to the date of enactment of this act.¹

6 (cf: P.L.2004, c.120, s.25)

7

8 '[3.] 4.¹ Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is
9 amended to read as follows:

10 3. a. There is established in, but not of, the department a Site
11 Improvement Advisory Board, to devise statewide site improvement
12 standards pursuant to section 4 of this act. The board shall consist
13 of the commissioner or his designee, who shall be a non-voting
14 member of the board, the Director of the Division of Housing in the
15 Department of Community Affairs, who shall be a voting member
16 of the board, and [10] nine other voting members, to be appointed
17 by the commissioner. The other members shall include two
18 professional planners, one of whom serves as a planner for a
19 governmental entity or whose professional experience is
20 predominantly in the public sector and who has worked in the
21 public sector for at least the previous five years and the other of
22 whom serves as a planner in private practice and has particular
23 expertise in private residential development and has been involved
24 in private sector planning for at least the previous five years, and
25 one representative each from:

- 26 (1) The New Jersey Society of Professional Engineers;
27 (2) The New Jersey Society of Municipal Engineers;
28 (3) The New Jersey Association of County Engineers;
29 (4) The New Jersey Federation of Planning Officials;
30 (5) [The Council on Affordable Housing] (Deleted by
31 amendment, P.L. , c. (C.);
32 (6) The New Jersey Builders' Association;
33 (7) The New Jersey Institute of Technology;
34 (8) The New Jersey State League of Municipalities.

35 b. Among the members to be appointed by the commissioner
36 who are first appointed, four shall be appointed for terms of two
37 years each, four shall be appointed for terms of three years each,
38 and two shall be appointed for terms of four years each. Thereafter,
39 each appointee shall serve for a term of four years. Vacancies in
40 the membership shall be filled in the same manner as original
41 appointments are made, for the unexpired term. The commission
42 shall select from among its members a chairman. Members may be
43 removed by the commissioner for cause.

44 c. Board members shall serve without compensation, but may
45 be entitled to reimbursement, from moneys appropriated or
46 otherwise made available for the purposes of this act, for expenses

1 incurred in the performance of their duties.

2 (cf: P.L.1993, c.32, s.3)

3
4 '4.1' Section 4 of P.L.1987, c.129 (C.40:55D-45.2) is
5 amended to read as follows:

6 4. A general development plan may include, but not be limited
7 to, the following:

8 a. A general land use plan at a scale specified by ordinance
9 indicating the tract area and general locations of the land uses to be
10 included in the planned development. The total number of dwelling
11 units and amount of nonresidential floor area to be provided and
12 proposed land area to be devoted to residential and nonresidential
13 use shall be set forth. In addition, the proposed types of
14 nonresidential uses to be included in the planned development shall
15 be set forth, and the land area to be occupied by each proposed use
16 shall be estimated. The density and intensity of use of the entire
17 planned development shall be set forth, and a residential density
18 and a nonresidential floor area ratio shall be provided;

19 b. A circulation plan showing the general location and types of
20 transportation facilities, including facilities for pedestrian access,
21 within the planned development and any proposed improvements to
22 the existing transportation system outside the planned development;

23 c. An open space plan showing the proposed land area and
24 general location of parks and any other land area to be set aside for
25 conservation and recreational purposes and a general description of
26 improvements proposed to be made thereon, including a plan for the
27 operation and maintenance of parks and recreational lands;

28 d. A utility plan indicating the need for and showing the
29 proposed location of sewage and water lines, any drainage facilities
30 necessitated by the physical characteristics of the site, proposed
31 methods for handling solid waste disposal, and a plan for the
32 operation and maintenance of proposed utilities;

33 e. A storm water management plan setting forth the proposed
34 method of controlling and managing storm water on the site;

35 f. An environmental inventory including a general description
36 of the vegetation, soils, topography, geology, surface hydrology,
37 climate and cultural resources of the site, existing man-made
38 structures or features and the probable impact of the development
39 on the environmental attributes of the site;

40 g. A community facility plan indicating the scope and type of
41 supporting community facilities which may include, but not be
42 limited to, educational or cultural facilities, historic sites, libraries,
43 hospitals, firehouses, and police stations;

44 h. A housing plan outlining the number of housing units to be
45 provided and the extent to which any affordable housing
46 [obligation assigned to the municipality pursuant to P.L.1985,
47 c.222 (C.52:27D-301 et al.) will be fulfilled] will be addressed by
48 the development;

1 i. A local service plan indicating those public services which
2 the applicant proposes to provide and which may include, but not be
3 limited to, water, sewer, cable and solid waste disposal;

4 j. A fiscal report describing the anticipated demand on
5 municipal services to be generated by the planned development and
6 any other financial impacts to be faced by municipalities or school
7 districts as a result of the completion of the planned development.
8 The fiscal report shall also include a detailed projection of property
9 tax revenues which will accrue to the county, municipality and
10 school district according to the timing schedule provided under
11 subsection k. of this section, and following the completion of the
12 planned development in its entirety;

13 k. A proposed timing schedule in the case of a planned
14 development whose construction is contemplated over a period of
15 years, including any terms or conditions which are intended to
16 protect the interests of the public and of the residents who occupy
17 any section of the planned development prior to the completion of
18 the development in its entirety; and

19 l. A municipal development agreement, which shall mean a
20 written agreement between a municipality and a developer relating
21 to the planned development.

22 (cf: P.L.1987, c.129, s.4)

23
24 '[5.] 6.' Section 3 of P.L.1992, c.79 (C.40A:12A-3) is
25 amended to read as follows:

26 3. As used in [this act] P.L.1992, c.79 (C.40A:12A-1 et seq.):

27 "Bonds" means any bonds, notes, interim certificates, debentures
28 or other obligations issued by a municipality, county,
29 redevelopment entity, or housing authority pursuant to P.L.1992,
30 c.79 (C.40A:12A-1 et al.).

31 "Comparable, affordable replacement housing" means newly-
32 constructed or substantially rehabilitated housing to be offered to a
33 household being displaced as a result of a redevelopment project,
34 that is affordable to that household based on its income under the
35 guidelines established by [the Council on Affordable Housing in]
36 the Department of Community Affairs for maximum affordable
37 sales prices or maximum fair market rents, and that is comparable
38 to the household's dwelling in the redevelopment area with respect
39 to the size and amenities of the dwelling unit, the quality of the
40 neighborhood, and the level of public services and facilities offered
41 by the municipality in which the redevelopment area is located.

42 "Development" means the division of a parcel of land into two or
43 more parcels, the construction, reconstruction, conversion,
44 structural alteration, relocation, or enlargement of any building or
45 other structure, or of any mining, excavation or landfill, and any use
46 or change in the use of any building or other structure, or land or
47 extension of use of land, for which permission may be required

1 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
2 (C.40:55D-1 et seq.).

3 "Governing body" means the body exercising general legislative
4 powers in a county or municipality according to the terms and
5 procedural requirements set forth in the form of government
6 adopted by the county or municipality.

7 "Housing authority" means a housing authority created or
8 continued pursuant to this act.

9 "Housing project" means a project, or distinct portion of a
10 project, which is designed and intended to provide decent, safe and
11 sanitary dwellings, apartments or other living accommodations for
12 persons of low and moderate income; such work or undertaking
13 may include buildings, land, equipment, facilities and other real or
14 personal property for necessary, convenient or desirable
15 appurtenances, streets, sewers, water service, parks, site
16 preparation, gardening, administrative, community, health,
17 recreational, educational, welfare or other purposes. The term
18 "housing project" also may be applied to the planning of the
19 buildings and improvements, the acquisition of property, the
20 demolition of existing structures, the construction, reconstruction,
21 alteration and repair of the improvements and all other work in
22 connection therewith.

23 "Persons of low and moderate income" means persons or
24 families who are, in the case of State assisted projects or programs,
25 so defined by the Council on Affordable Housing in the Department
26 of Community Affairs, or in the case of federally assisted projects
27 or programs, defined as of "low and very low income" by the
28 United States Department of Housing and Urban Development.

29 "Public body" means the State or any county, municipality,
30 school district, authority or other political subdivision of the State.

31 "Public housing" means any housing for persons of low and
32 moderate income owned by a municipality, county, the State or the
33 federal government, or any agency or instrumentality thereof.

34 "Publicly assisted housing" means privately owned housing
35 which receives public assistance or subsidy, which may be grants or
36 loans for construction, reconstruction, conservation, or
37 rehabilitation of the housing, or receives operational or maintenance
38 subsidies either directly or through rental subsidies to tenants, from
39 a federal, State or local government agency or instrumentality.

40 "Real property" means all lands, including improvements and
41 fixtures thereon, and property of any nature appurtenant thereto or
42 used in connection therewith, and every estate, interest and right,
43 legal or equitable, therein, including terms for years and liens by
44 way of judgment, mortgage or otherwise, and indebtedness secured
45 by such liens.

46 "Redeveloper" means any person, firm, corporation or public
47 body that shall enter into or propose to enter into a contract with a
48 municipality or other redevelopment entity for the redevelopment or

1 rehabilitation of an area in need of redevelopment, or an area in
2 need of rehabilitation, or any part thereof, under the provisions of
3 this act, or for any construction or other work forming part of a
4 redevelopment or rehabilitation project.

5 "Redevelopment" means clearance, replanning, development and
6 redevelopment; the conservation and rehabilitation of any structure
7 or improvement, the construction and provision for construction of
8 residential, commercial, industrial, public or other structures and
9 the grant or dedication of spaces as may be appropriate or necessary
10 in the interest of the general welfare for streets, parks, playgrounds,
11 or other public purposes, including recreational and other facilities
12 incidental or appurtenant thereto, in accordance with a
13 redevelopment plan.

14 "Redevelopment agency" means a redevelopment agency created
15 pursuant to subsection a. of section 11 of P.L.1992, c.79
16 (C.40A:12A-11) or established heretofore pursuant to the
17 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et
18 al.), repealed by this act, which has been permitted in accordance
19 with the provisions of this act to continue to exercise its
20 redevelopment functions and powers.

21 "Redevelopment area" or "area in need of redevelopment" means
22 an area determined to be in need of redevelopment pursuant to
23 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6)
24 or determined heretofore to be a "blighted area" pursuant to
25 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
26 determinations as made pursuant to the authority of Article VIII,
27 Section III, paragraph 1 of the Constitution. A redevelopment area
28 may include lands, buildings, or improvements which of themselves
29 are not detrimental to the public health, safety or welfare, but the
30 inclusion of which is found necessary, with or without change in
31 their condition, for the effective redevelopment of the area of which
32 they are a part.

33 "Redevelopment entity" means a municipality or an entity
34 authorized by the governing body of a municipality pursuant to
35 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
36 implement redevelopment plans and carry out redevelopment
37 projects in an area in need of redevelopment, or in an area in need
38 of rehabilitation, or in both.

39 "Redevelopment plan" means a plan adopted by the governing
40 body of a municipality for the redevelopment or rehabilitation of all
41 or any part of a redevelopment area, or an area in need of
42 rehabilitation, which plan shall be sufficiently complete to indicate
43 its relationship to definite municipal objectives as to appropriate
44 land uses, public transportation and utilities, recreational and
45 municipal facilities, and other public improvements; and to indicate
46 proposed land uses and building requirements in the redevelopment
47 area or area in need of rehabilitation, or both.

1 "Redevelopment project" means any work or undertaking
2 pursuant to a redevelopment plan; such undertaking may include
3 any buildings, land, including demolition, clearance or removal of
4 buildings from land, equipment, facilities, or other real or personal
5 properties which are necessary, convenient, or desirable
6 appurtenances, such as but not limited to streets, sewers, utilities,
7 parks, site preparation, landscaping, and administrative, community,
8 health, recreational, educational, and welfare facilities.

9 "Rehabilitation" means an undertaking, by means of extensive
10 repair, reconstruction or renovation of existing structures, with or
11 without the introduction of new construction or the enlargement of
12 existing structures, in any area that has been determined to be in
13 need of rehabilitation or redevelopment, to eliminate substandard
14 structural or housing conditions and arrest the deterioration of that
15 area.

16 "Rehabilitation area" or "area in need of rehabilitation" means
17 any area determined to be in need of rehabilitation pursuant to
18 section 14 of P.L.1992, c.79 (C.40A:12A-14).

19 (cf: P.L.2008, c.46, s.1)
20

21 '[6.] 7.' Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended
22 to read as follows:

23 7. a. No redevelopment project shall be undertaken or carried out
24 except in accordance with a redevelopment plan adopted by
25 ordinance of the municipal governing body, upon its finding that the
26 specifically delineated project area is located in an area in need of
27 redevelopment or in an area in need of rehabilitation, or in both,
28 according to criteria set forth in section 5 or section 14 of P.L.1992,
29 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

30 The redevelopment plan shall include an outline for the planning,
31 development, redevelopment, or rehabilitation of the project area
32 sufficient to indicate:

33 (1) Its relationship to definite local objectives as to appropriate
34 land uses, density of population, and improved traffic and public
35 transportation, public utilities, recreational and community facilities
36 and other public improvements.

37 (2) Proposed land uses and building requirements in the project
38 area.

39 (3) Adequate provision for the temporary and permanent
40 relocation, as necessary, of residents in the project area, including
41 an estimate of the extent to which decent, safe and sanitary dwelling
42 units affordable to displaced residents will be available to them in
43 the existing local housing market.

44 (4) An identification of any property within the redevelopment
45 area which is proposed to be acquired in accordance with the
46 redevelopment plan.

47 (5) Any significant relationship of the redevelopment plan to (a)
48 the master plans of contiguous municipalities, (b) the master plan of

1 the county in which the municipality is located, and (c) the State
2 Development and Redevelopment Plan adopted pursuant to the
3 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).

4 (6) As of the date of the adoption of the resolution finding the
5 area to be in need of redevelopment, an inventory of all housing
6 units affordable to low and moderate income households, as defined
7 pursuant to section [4 of P.L.1985, c.222 (C.52:27D-304)] '[20]
8 22¹ of P.L. , c. (C.) (pending before the Legislature as this
9 bill), that are to be removed as a result of implementation of the
10 redevelopment plan, whether as a result of subsidies or market
11 conditions, listed by affordability level, number of bedrooms, and
12 tenure.

13 (7) A plan for the provision, through new construction or
14 substantial rehabilitation of one comparable, affordable replacement
15 housing unit for each affordable housing unit that has been
16 occupied at any time within the last 18 months, that is subject to
17 affordability controls and that is identified as to be removed as a
18 result of implementation of the redevelopment plan. Displaced
19 residents of housing units provided under any State or federal
20 housing subsidy program, or pursuant to the "Fair Housing Act,"
21 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to
22 be eligible, shall have first priority for those replacement units
23 provided under the plan; provided that any such replacement unit
24 shall not be [credited against a prospective municipal obligation
25 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
26 al.)] counted as qualified units, if the housing unit which is
27 removed had previously been [credited toward satisfying the
28 municipal fair share obligation] counted. To the extent reasonably
29 feasible, replacement housing shall be provided within or in close
30 proximity to the redevelopment area. A municipality shall report
31 annually to the Department of Community Affairs on its progress in
32 implementing the plan for provision of comparable, affordable
33 replacement housing required pursuant to this section.

34 b. A redevelopment plan may include the provision of
35 affordable housing in accordance with the "Fair Housing Act,"
36 P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of
37 the municipal master plan.

38 c. The redevelopment plan shall describe its relationship to
39 pertinent municipal development regulations as defined in the
40 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
41 The redevelopment plan shall supersede applicable provisions of the
42 development regulations of the municipality or constitute an
43 overlay zoning district within the redevelopment area. When the
44 redevelopment plan supersedes any provision of the development
45 regulations, the ordinance adopting the redevelopment plan shall
46 contain an explicit amendment to the zoning district map included
47 in the zoning ordinance. The zoning district map as amended shall

1 indicate the redevelopment area to which the redevelopment plan
2 applies. Notwithstanding the provisions of the "Municipal Land
3 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no
4 notice beyond that required for adoption of ordinances by the
5 municipality shall be required for the hearing on or adoption of the
6 redevelopment plan or subsequent amendments thereof.

7 d. All provisions of the redevelopment plan shall be either
8 substantially consistent with the municipal master plan or designed
9 to effectuate the master plan; but the municipal governing body may
10 adopt a redevelopment plan which is inconsistent with or not
11 designed to effectuate the master plan by affirmative vote of a
12 majority of its full authorized membership with the reasons for so
13 acting set forth in the redevelopment plan.

14 e. Prior to the adoption of a redevelopment plan, or revision or
15 amendment thereto, the planning board shall transmit to the
16 governing body, within 45 days after referral, a report containing its
17 recommendation concerning the redevelopment plan. This report
18 shall include an identification of any provisions in the proposed
19 redevelopment plan which are inconsistent with the master plan and
20 recommendations concerning these inconsistencies and any other
21 matters as the board deems appropriate. The governing body, when
22 considering the adoption of a redevelopment plan or revision or
23 amendment thereof, shall review the report of the planning board
24 and may approve or disapprove or change any recommendation by a
25 vote of a majority of its full authorized membership and shall
26 record in its minutes the reasons for not following the
27 recommendations. Failure of the planning board to transmit its
28 report within the required 45 days shall relieve the governing body
29 from the requirements of this subsection with regard to the pertinent
30 proposed redevelopment plan or revision or amendment thereof.
31 Nothing in this subsection shall diminish the applicability of the
32 provisions of subsection d. of this section with respect to any
33 redevelopment plan or revision or amendment thereof.

34 f. The governing body of a municipality may direct the
35 planning board to prepare a redevelopment plan or an amendment
36 or revision to a redevelopment plan for a designated redevelopment
37 area. After completing the redevelopment plan, the planning board
38 shall transmit the proposed plan to the governing body for its
39 adoption. The governing body, when considering the proposed
40 plan, may amend or revise any portion of the proposed
41 redevelopment plan by an affirmative vote of the majority of its full
42 authorized membership and shall record in its minutes the reasons
43 for each amendment or revision. When a redevelopment plan or
44 amendment to a redevelopment plan is referred to the governing
45 body by the planning board under this subsection, the governing
46 body shall be relieved of the referral requirements of subsection e.
47 of this section.

48 (cf: P.L.2008, c.46, s.2)

1 '【7.】 8.' Section 16 of P.L.1992, c.79 (C.40A:12A-16) is
2 amended to read as follows:

3 16. a. In order to carry out the housing purposes of this act, a
4 municipality, county, or housing authority may exercise the
5 following powers, in addition to those set forth in section 22 of
6 P.L.1992, c.79 (C.40A:12A-22):

7 (1) Plan, construct, own, and operate housing projects; maintain,
8 reconstruct, improve, alter, or repair any housing project or any part
9 thereof; and for these purposes, receive and accept from the State or
10 federal government, or any other source, funds or other financial
11 assistance;

12 (2) Lease or rent any dwelling house, accommodations, lands,
13 buildings, structures or facilities embraced in any housing project;
14 and pursuant to the provisions of this act, establish and revise the
15 rents and charges therefor;

16 (3) Acquire property pursuant to subsection i. of section 22 of
17 P.L.1992, c.79 (C.40A:12A-22);

18 (4) Acquire, by condemnation, any land or building which is
19 necessary for the housing project, pursuant to the provisions of the
20 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

21 (5) Issue bonds in accordance with the provisions of section 29
22 of P.L.1992, c.79 (C.40A:12A-29);

23 (6) Cooperate with any other municipality, private, county, State
24 or federal entity to provide funds to the municipality or other
25 governmental entity and to homeowners, tenant associations,
26 nonprofit or private developers to acquire, construct, rehabilitate or
27 operate publicly assisted housing, and to provide rent subsidies for
28 persons of low and moderate income, including the elderly,
29 pursuant to applicable State or federal programs;

30 (7) Encourage the use of demand side subsidy programs such as
31 certificates and vouchers for low-income families and promote the
32 use of project based certificates which provide subsidies for units in
33 newly constructed and substantially rehabilitated structures, and of
34 tenant based certificates which subsidize rent in existing units;

35 (8) Cooperate with any State or federal entity to secure
36 mortgage assistance for any person of low or moderate income;

37 (9) Provide technical assistance and support to nonprofit
38 organizations and private developers interested in constructing low
39 and moderate income housing;

40 (10) If it owns and operates public housing units, provide to the
41 tenants public safety services, including protection against drug
42 abuse, and social services, including counseling and financial
43 management, in cooperation with other agencies;

44 (11) Provide emergency shelters, transitional housing and
45 supporting services to homeless families and individuals.

46 b. All housing projects, programs and actions undertaken
47 pursuant to this act shall accord with the housing element of the
48 master plan of the municipality within which undertaken, and with

1 【any fair share housing plan filed by the municipality with the
2 Council on Affordable Housing, based upon the council's criteria
3 and guidelines, pursuant to】 the "Fair Housing Act," P.L.1985,
4 c.222 (C.52:27D-301 et al.)【, whether or not the municipality has
5 petitioned for substantive certification of the plan】.
6 (cf: P.L.1992, c.79, s.16)

7
8 '【8.】 9.' Section 2 of P.L.1992, c.148 (C.46:15-10.2) is
9 amended to read as follows:

10 2. a. The annual appropriations act for each State fiscal year
11 shall, without other conditions, limitations or restrictions on the
12 following:

13 (1) credit amounts paid to the State Treasurer, if any, in
14 payment of fees collected pursuant to paragraph (1) or paragraph
15 (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) to the
16 "Shore Protection Fund" created pursuant to section 1 of P.L.1992,
17 c.148 (C.13:19-16.1), the 【Neighborhood Preservation Nonlapsing
18 Revolving Fund】 "New Jersey Affordable Housing Trust Fund,"
19 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
20 320), and the "Highlands Protection Fund" created pursuant to
21 section 21 of P.L.2004, c.120 (C.13:20-19), pursuant to the
22 requirements of section 4 of P.L.1968, c.49 (C.46:15-8);

23 (2) appropriate the balance of the "Shore Protection Fund"
24 created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for
25 the purposes of that fund;

26 (3) appropriate the balance of the 【Neighborhood Preservation
27 Nonlapsing Revolving Fund】 "New Jersey Affordable Housing
28 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
29 (C.52:27D-320), for the purposes of that fund, including any
30 permitted transfer of monies to the "Urban Housing Assistance
31 Fund," established pursuant to section 13 of P.L.2008, c.46
32 (C.52:27D-329.7); and

33 (4) appropriate the balance of the "Highlands Protection Fund"
34 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), for
35 the purposes of that fund.

36 b. If the requirements of subsection a. of this section are not
37 met on the effective date of an annual appropriations act for the
38 State fiscal year, or if an amendment or supplement to an annual
39 appropriations act for the State fiscal year should violate any of the
40 requirements of subsection a. of this section, the Director of the
41 Division of Budget and Accounting in the Department of the
42 Treasury shall, not later than five days after the enactment of the
43 annual appropriations act, or an amendment or supplement thereto,
44 that violates any of the requirements of subsection a. of this section,
45 certify to the Director of the Division of Taxation that the
46 requirements of subsection a. of this section have not been met.

47 (cf: P.L.2004, c.120, s.62)

1 '【9.】 10.' Section 9 of P.L.1966, c.293 (C.52:27D-9) is
2 amended to read as follows:

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

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

7 (b) Advise and inform the Governor on the affairs and problems
8 of local government and make recommendations to the Governor
9 for proposed legislation pertaining thereto;

10 (c) Encourage cooperative action by local governments,
11 including joint service agreements, regional compacts and other
12 forms of regional cooperation;

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

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

16 (f) Collect, collate, publish and disseminate information
17 necessary for the effective operation of the department and useful
18 to local government;

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

22 (h) Stimulate local programs through publicity, education,
23 guidance and technical assistance concerning Federal and State
24 programs;

25 (i) Convene meetings of municipal, county or other local
26 officials to discuss ways of cooperating to provide service more
27 efficiently and economically; **【and】**

28 (j) Maintain and make available on request a list of persons
29 qualified to mediate or arbitrate disputes between local units of
30 government arising from joint service projects or other cooperative
31 activities, and further to prescribe rates of compensation for all such
32 mediation, factfinding or arbitration services; and

33 (k) Assume the duties of the Council on Affordable Housing
34 that are not repealed by P.L. , c. (pending before the Legislature
35 as this bill) and are transferred to the department pursuant to section
36 2 of P.L. , c. (C.) (pending before the Legislature as this
37 bill).

38 (cf: P.L.1973, c.208, s.10)

39

40 '【10.】 11.' Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is
41 amended to read as follows:

42 1. As used in **【this act】** P.L.1991, c.479 (C.52:27D-307.1 et
43 seq.):

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.)]

5 "Department" means the Department of Community Affairs.

6 "Housing region" means a housing region as determined by the
7 Council on Affordable Housing pursuant to section 7 of P.L.1985,
8 c.222 (C.52:27D-307).

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

20 "Register" means the Register of Housing Projects directed by
21 section 2 of '[this act]' P.L.1991, c.479 (C.52:27D-307.2) to be
22 established and maintained by the commissioner.
23 (cf: P.L.1991, c.479, s.1)
24

25 '[11.] 12.' Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is
26 amended to read as follows:

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

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

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

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

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

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

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

21
22 '[12.] 13.' Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is
23 amended to read as follows:

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

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

1 the commissioner made in pursuance of **his** the commissioner's
2 duties and responsibilities under this act.

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

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

15
16 '14. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended
17 to read as follows:

18 10. A municipality's housing element shall be designed to
19 achieve the goal of access to affordable housing to **meet present**
20 **and prospective** achieve the mix of housing stock described in
21 paragraph (1) of subsection a. of section 23 of P.L. , c. (C.)
22 (pending before the Legislature as this bill), with particular
23 attention to low and moderate income housing, and shall contain at
24 least:

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

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

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

43 d. An analysis of the existing and probable future employment
44 characteristics of the municipality;

45 e. A determination of the municipality's **present and**
46 **prospective fair share** resources and need for low and moderate
47 income housing and its capacity to accommodate its **present and**

1 prospective] housing needs, including [its fair share for] low and
2 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 g. An analysis calculating the number of existing substandard
10 housing units in the municipality occupied by low and moderate
11 income families and a plan for rehabilitating at least that number of
12 units within the next 10 years.¹

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

14
15 ¹[13.] 15.¹ Section 1 of P.L.2005, c.350 (C.52:27D-311a) is
16 amended to read as follows:

17 1. Beginning upon the effective date of P.L.2005, c.350
18 (C.52:27D-311a et al.), in order to be a qualified unit for purposes
19 of P.L. , c. (C.), any new construction for which credit is
20 sought [against a fair share obligation] shall be adaptable in
21 accordance with the provisions of section 5 of P.L.2005, c.350
22 (C.52:27D-123.15). For the purposes of P.L.2005, c.350
23 (C.52:27D-311a et al.), "new construction" shall mean an entirely
24 new improvement not previously occupied or used for any purpose.
25 (cf: P.L.2005, c.350, s.1)

26
27 ¹[14.] 16.¹ Section 6 of P.L.2005, c.350 (C.52:27D-311b) is
28 amended to read as follows:

29 6. The [council] department may take such measures as are
30 necessary to assure compliance with the adaptability requirements
31 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
32 including the inspection of those units which are newly constructed
33 and receive housing credit as provided under section 1 of P.L.2005,
34 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring
35 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).
36 [If any units for which credit was granted in accordance with the
37 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not
38 to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a
39 et al.), the council may require the municipality to amend its fair
40 share plan within 90 days of receiving notice from the council, to
41 address its fair share obligation pursuant to P.L.1985, c.222
42 (C.52:27D-301 et al.). In the event that the municipality fails to
43 amend its fair share plan within 90 days of receiving such notice,
44 the council may revoke substantive certification.]

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

1 '【15.】 17.' Section 20 of P.L.1985, c.222 (C.52:27D-320) is
2 amended to read as follows:

3 20. There is established in the Department of Community
4 Affairs a separate trust fund, to be used for the exclusive purposes
5 as provided in this section, and which shall be known as the "New
6 Jersey Affordable Housing Trust Fund." The fund shall be a non-
7 lapsing, revolving trust fund, and all monies deposited or received
8 for purposes of the fund shall be accounted for separately, by source
9 and amount, and remain in the fund until appropriated for such
10 purposes. The fund shall be the repository of all State funds
11 appropriated for affordable housing purposes, including, but not
12 limited to, the proceeds from the receipts of the additional fee
13 collected pursuant to paragraph (2) of subsection a. of section 3 of
14 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
15 Statewide non-residential development fees collected pursuant to
16 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
17 reverting from municipal development trust funds, or other monies
18 as may be dedicated, earmarked, or appropriated by the Legislature
19 for the purposes of the fund. All references in any law, order, rule,
20 regulation, contract, loan, document, or otherwise, to the
21 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
22 mean the "New Jersey Affordable Housing Trust Fund." No less
23 than 13 percent of the total expenditures in any State fiscal year
24 from the New Jersey Affordable Housing Trust Fund shall be used
25 for housing projects reserved for very low income households and
26 special needs housing units. The department shall be permitted to
27 utilize annually up to 7.5 percent of the monies available in the fund
28 for the payment of any necessary administrative costs related to the
29 administration of the "Fair Housing Act," P.L.1985, c.222
30 (C.52:27D-301 et al.), the State Housing Commission, or any costs
31 related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

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

44 Of those monies deposited into the "New Jersey Affordable
45 Housing Trust Fund" that are derived from municipal development
46 fee trust funds, or from available collections of Statewide non-
47 residential development fees, a priority for funding shall be

1 established for projects in municipalities that have petitioned the
 2 council for substantive certification]. The commissioner shall
 3 prioritize funding for projects that include special needs units when
 4 making grants and awards from the "New Jersey Affordable
 5 Housing Trust Fund." ¹The commissioner shall assess the housing
 6 need in each region of the State and consider the assessment in
 7 prioritizing awards from the fund.¹

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

11 b. The commissioner shall establish rules and regulations
 12 governing the qualifications of applicants, the application
 13 procedures, and the criteria for awarding grants and loans and the
 14 standards for establishing the amount, terms and conditions of each
 15 grant or loan.

16 c. **[For any period which the council may approve, the**
 17 **commissioner may assist affordable housing programs which are**
 18 **not located in municipalities whose housing elements have been**
 19 **granted substantive certification or which are not in furtherance of a**
 20 **regional contribution agreement; provided that the affordable**
 21 **housing program will meet all or part of a municipal low and**
 22 **moderate income housing obligation.]** ¹(¹Deleted by amendment,
 23 P.L. , c. ¹[(C.)¹](pending before the Legislature as this bill).

24 d. Amounts deposited in the "New Jersey Affordable Housing
 25 Trust Fund" shall be targeted to **[regions based on the region's**
 26 **percentage of the State's low and moderate income housing need as**
 27 **determined by the council]** assist projects in municipalities that are
 28 deemed compliant pursuant to section ¹[21] 24 of P.L. , c. (C.)
 29 pending before the Legislature as this bill) or pursuant to section
 30 25¹ of P.L. , c.¹ (C.) (pending before the Legislature as
 31 this bill), and to assist projects in municipalities that are neither
 32 compliant nor deemed compliant pursuant to P.L. , c. (C.)
 33 (pending before the Legislature as this bill). Amounts **[in the fund]**
 34 deposited in the "New Jersey Affordable Housing Trust Fund" shall
 35 be applied for the following purposes in designated neighborhoods:

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

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

40 (3) Conversion of non-residential space to residential purposes;
 41 provided at least 10 percent of the resulting housing units are to be
 42 occupied by low and moderate income households;

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

46 (5) Grants of assistance to eligible municipalities for costs of
 47 necessary studies, surveys, plans and permits; engineering,

1 architectural and other technical services; costs of land acquisition
2 and any buildings thereon; and costs of site preparation, demolition
3 and infrastructure development for projects undertaken pursuant to
4 an approved regional contribution agreement;

5 (6) Assistance to a local housing authority, nonprofit or limited
6 dividend housing corporation or association or a qualified entity
7 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
8 rehabilitation or restoration of housing units which it administers
9 which: (a) are unusable or in a serious state of disrepair; (b) can be
10 restored in an economically feasible and sound manner; and (c) can
11 be retained in a safe, decent and sanitary manner, upon completion
12 of rehabilitation or restoration; **[and]**

13 (7) Other housing programs for low and moderate income
14 housing, including, without limitation, (a) infrastructure projects
15 directly facilitating the construction of low and moderate income
16 housing not to exceed a reasonable percentage of the construction
17 costs of the low and moderate income housing to be provided and
18 (b) alteration of dwelling units occupied or to be occupied by
19 households of low or moderate income and the common areas of the
20 premises in which they are located in order to make them accessible
21 to handicapped persons; and

22 (8) Transfers authorized pursuant to this section to the "Urban
23 Housing Assistance Fund" established by section 13 of P.L.2008,
24 c.46 (C.52:27D-329.7) to provide assistance for rehabilitation and
25 new construction through the Urban Housing Assistance Program
26 pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7).

27 e. Any grant or loan agreement entered into pursuant to this
28 section shall incorporate contractual guarantees and procedures by
29 which the division will ensure that any unit of housing provided for
30 low and moderate income households shall continue to be occupied
31 by low and moderate income households for at least 20 years
32 following the award of the loan or grant, except that the division
33 may approve a guarantee for a period of less than 20 years where
34 necessary to ensure project feasibility.

35 f. Notwithstanding the provisions of any other law, rule or
36 regulation to the contrary, in making grants or loans under this
37 section, the department shall not require that tenants be certified as
38 low or moderate income or that contractual guarantees or deed
39 restrictions be in place to ensure continued low and moderate
40 income occupancy as a condition of providing housing assistance
41 from any program administered by the department, when that
42 assistance is provided for a project of moderate rehabilitation if the
43 project (1) contains 30 or fewer rental units and (2) is located in a
44 census tract in which the median household income is 60 percent or
45 less of the median income for the housing region in which the
46 census tract is located, as determined for a three person household
47 by the council in accordance with the latest federal decennial
48 census. A list of eligible census tracts shall be maintained by the

1 department and shall be adjusted upon publication of median
2 income figures by census tract after each federal decennial census.

3 g. In addition to other grants or loans awarded pursuant to this
4 section, and without regard to any limitations on such grants or
5 loans for any other purposes herein imposed, the commissioner
6 shall annually allocate such amounts as may be necessary in the
7 commissioner's discretion, and in accordance with section 3 of
8 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
9 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
10 287.1 et al.). Such rental assistance grants shall be deemed
11 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
12 301 et al.), in order to meet the housing needs of certain low income
13 households who may not be eligible to occupy other housing
14 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

15 h. The department and the State Treasurer shall submit the
16 "New Jersey Affordable Housing Trust Fund" for an audit annually
17 by the State Auditor or State Comptroller, at the discretion of the
18 Treasurer. In addition, the department shall prepare an annual
19 report for each fiscal year, and submit it by November 30th of each
20 year to the Governor and the Legislature, and the Joint Committee
21 on Housing Affordability, or its successor, and post the information
22 to its web site, of all activity of the fund, including details of the
23 grants and loans by number of units, number and income ranges of
24 recipients of grants or loans, location of the housing renovated or
25 constructed using monies from the fund, the number of units upon
26 which affordability controls were placed, and the length of those
27 controls. The report also shall include details pertaining to those
28 monies allocated from the fund for use by the State rental assistance
29 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
30 and subsection g. of this section.

31 i. The commissioner may award or grant the amount of any
32 appropriation deposited in the "New Jersey Affordable Housing
33 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
34 320.1) to municipalities pursuant to the provisions of section 39 of
35 P.L.2009, c.90 (C.40:55D-8.8).

36 j. Not less than 10 percent and not more than 25 percent of the
37 amount of the additional fees collected pursuant to paragraph (2) of
38 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) and
39 deposited in the "New Jersey Affordable Housing Trust Fund" shall
40 be transferred to the "Urban Housing Assistance Fund" in any State
41 fiscal year.

42 (cf: P.L.2009, c.90, s.38)

43
44 '16.] 18.' Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is
45 amended to read as follows:

46 19. a. Notwithstanding any rules of the New Jersey Housing
47 and Mortgage Finance Agency to the contrary, the allocation of low
48 income tax credits shall be made by the agency to the full extent

1 such credits are permitted to be allocated under federal law,
 2 including allocations of 4 percent or 9 percent federal low income
 3 tax credits, and including allocations allowable for partial credits.
 4 The affordable portion of any mixed income or mixed use
 5 development that is part of a **[fair share]** housing plan **[approved**
 6 **by the council, or]** including a development that has received a
 7 court-approved judgment of repose or compliance, including, but
 8 not limited to, a development that has received a density bonus,
 9 shall be permitted to receive allocations of low income tax credits,
 10 provided that the applicant can conclusively demonstrate that the
 11 market rate residential or commercial units are unable to internally
 12 subsidize the affordable units, and the affordable units are
 13 developed contemporaneously with the commercial or market rate
 14 residential units. In adopting the Qualified Allocation Plan
 15 pursuant to 26 U.S.C. s.42, and any rules promulgated thereunder,
 16 the 'Agency' agency' shall, '[in] assess the housing needs and
 17 resources in each region and consider the assessment in issuing
 18 credits. The agency shall, in' issuing the credits, prioritize
 19 applications from projects '[that include a special needs or very
 20 low income unit] in municipalities that are deemed compliant
 21 pursuant to section 24 of P.L. , c. (C.) (pending before the
 22 Legislature as this bill) or pursuant to section 25 of
 23 P.L. , c. (C.) (pending before the Legislature as this bill),
 24 and to assist projects in municipalities that are neither compliant
 25 nor deemed compliant pursuant to P.L. , c. (C.) (pending
 26 before the Legislature as this bill), and that include at least 10
 27 percent special needs or very low income units'.

28 b. A housing unit financed in whole or in part through the
 29 allocation of federal Low-Income Housing Tax Credits shall be
 30 eligible to be counted as a qualified unit for purposes of
 31 determining whether a municipality is a compliant municipality
 32 pursuant to section 21 of P.L. , c. (C.) (pending before the
 33 Legislature as this bill) if the requirements of federal law pursuant
 34 to 26 U.S.C. s.42 have been met for that unit.

35 (cf: P.L.2008, c.46, s.19)

36
 37 **'[17.] 19.'** Section 13 of P.L.2008, c.46 (C.52:27D-329.7) is
 38 amended to read as follows:

39 13. a. There is established within the Department of Community
 40 Affairs an Urban Housing Assistance Program for the purposes of
 41 assisting certain municipalities in the provision of housing through
 42 the rehabilitation of existing buildings or the construction of
 43 affordable housing.

44 b. Within the program there shall be established a trust fund to
 45 be known as the "Urban Housing Assistance Fund," into which may
 46 be deposited:

1 (1) monies which may be available to the fund from any other
2 programs established for the purposes of housing rehabilitation[,
3 other than monies from the "New Jersey Affordable Housing Trust
4 Fund," established pursuant to section 20 of P.L.1985, c.222
5 (C.52:27D-320)];

6 (2) monies appropriated by the Legislature to the fund; and

7 (3) any other funds made available through State or federal
8 housing programs for the purposes of producing affordable housing
9 [, other than monies from the "New Jersey Affordable Housing
10 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
11 (C.52:27D-320)].

12 c. The Commissioner of Community Affairs shall develop a
13 strategic five-year plan for the program aimed at developing
14 strategies to assist municipalities in creating rehabilitation programs
15 and other programs to produce safe, decent housing within the
16 municipality.

17 d. The commissioner may award a housing rehabilitation grant
18 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
19 (C.52:27D-178 et seq.), or a non-profit corporation in a
20 municipality that qualifies for such aid, and that has submitted a
21 valid application to the Department of Community Affairs which
22 details the manner in which the municipality will utilize funding in
23 order to meet the municipality's need to rehabilitate or create safe,
24 decent, and affordable housing.

25 e. The commissioner shall promulgate rules and regulations,
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.), to effectuate the purposes of P.L.2008, c.46
28 (C.52:27D-329.1 et al.); provided that the regulations shall permit a
29 municipality broad discretion in shaping its housing rehabilitation
30 and construction program, but shall not permit a municipality to
31 provide assistance to any household having an income greater than
32 120 percent of median household income for the housing region.
33 The department may require a return of a grant upon its
34 determination that a municipality is not performing in accordance
35 with its grant or with the regulations.

36 (cf: P.L.2008, c.46, s.13)

37

38 '18.] 20.' Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is
39 amended to read as follows:

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

1 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization
 2 Planning Authority pursuant to section 5 of P.L.2006, c.16
 3 (C.52:27I-5), or its successor, and the Highlands Water Protection
 4 and Planning Council pursuant to section 11 of P.L.2004, c.120
 5 (C.13:20-11), but excluding joint planning boards formed pursuant
 6 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
 7 required to be reserved for occupancy by low or moderate income
 8 households at least 20 percent of the residential units constructed, to
 9 the extent this is economically feasible.】 (Deleted by amendment,
 10 P.L. , c.).

11 b. A developer of a project consisting of newly-constructed
 12 residential units being financed in whole or in part with State funds,
 13 including, but not limited to, transit villages designated by the
 14 Department of Transportation, units constructed on State-owned
 15 property, and urban transit hubs as defined pursuant to section 2 of
 16 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
 17 **【20】 10** percent of the residential units constructed **【for occupancy**
 18 **by】** as low or moderate income **【households】** housing, as those
 19 terms are defined in section **【4 of P.L.1985, c.222 (C.52:27D-304)】**
 20 **‘【20】 22’** of P.L. , c. (C.) (pending before the Legislature as
 21 this bill), with affordability controls as required under the rules of
 22 the **【council, unless the municipality in which the property is**
 23 **located has received substantive certification from the council】**
 24 department **【and such a reservation is not required under the**
 25 **approved affordable housing plan, or the municipality has been**
 26 **given a judgment of repose or a judgment of compliance by the**
 27 **court, and such a reservation is not required under the approved**
 28 **affordable housing plan】** pursuant to P.L. , c. (C.) (pending
 29 before the Legislature as this bill).

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

39 **(2) The regional planning entities identified in subsection a. of**
 40 **this section shall identify and coordinate regional affordable**
 41 **housing opportunities in cooperation with municipalities in areas**
 42 **with convenient access to infrastructure, employment opportunities,**
 43 **and public transportation. Coordination of affordable housing**
 44 **opportunities may include methods to regionally provide housing in**
 45 **line with regional concerns, such as transit needs or opportunities,**
 46 **environmental concerns, or such other factors as the council may**
 47 **permit; provided, however, that such provision by such a regional**

entity may not result in more than a 50 percent change in the fair share obligation of any municipality; provided that this limitation shall not apply to affordable housing units directly attributable to development by the New Jersey Sports and Exposition Authority within the New Jersey Meadowlands District.

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

(4) The coordination of affordable housing opportunities by regional entities as identified in this section shall not include activities which would provide housing units to be located in those municipalities that are eligible to receive aid under the "Special Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or are coextensive with a school district which qualified for designation as a "special needs district" pursuant to the "Quality Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at any time in the last 10 years has been qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the jurisdiction of any of the regional entities specified in subsection a. of this section. ¹c. ¹ (Deleted by amendment, P.L. , c.). (cf: P.L.2008, c.46, s.18)

¹[19.] 21.¹ (New section) To determine whether property has access to sewer for purposes of determining whether the property is developable land as defined in section ¹[20] 22¹ of P.L. , c. (C.) (pending before the Legislature as this bill), any party may apply to the Department of Environmental Protection for a review or determination of site specific or project specific amendments or revisions to wastewater management plans and water quality management plans when a county or other wastewater management planning agency has not adopted or submitted a wastewater management plan in accordance with the schedule at N.J.A.C.7:15-5.23(a). The Department of Environmental Protection shall review and act upon the amendments or revisions within 90 days of receipt of a complete application for a determination or review.

¹[20.] 22.¹ (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

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

1 "Affordability control" means any deed restriction, covenant, or
2 other legally binding provision requiring that a low or moderate
3 income housing unit remains affordable to and restricted to
4 occupancy by low or moderate income households, as the case may
5 be, for a period of 30 years from the date of initial occupancy of the
6 unit, or for the time period required pursuant to any regulation in
7 force at the time of sale of the unit.

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

10 "Attached housing" means any form of residential development
11 other than detached single family housing, including, but not
12 limited to, two-family housing, three-family housing, attached
13 single family houses, multifamily apartments, and manufactured
14 housing communities.

15 "Compliance threshold" means the percentage of a
16 municipality's housing stock that is required to be qualified housing
17 units in order for the municipality to be deemed a compliant
18 municipality.

19 "Conversion" means the conversion of existing commercial,
20 industrial, or residential structures for low and moderate income
21 housing purposes where at least 10 percent of the housing units are
22 provided for a reasonable income range of low and moderate
23 income households.

24 "Council" means the former Council on Affordable Housing
25 established by section 5 of P.L.1985, c.222, and, following the
26 effective date of P.L. , c. (C.) (pending before the
27 Legislature as this bill), the Department of Community Affairs,
28 '【pursuant to】' pursuant to section 2 of P.L. , c. (C.) (pending
29 before the Legislature as this bill).

30 "Department" means the Department of Community Affairs
31 established pursuant to section 1 of P.L.1966, 293 (C.52:27D-1).

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

35 "Developable land" means any lot or parcel, whether or not the
36 parcel is vacant, or any part of a lot or parcel, having access to
37 sewer service, or that has been determined by the Department of
38 Environmental Protection, pursuant to section '【19】 21' of P.L. ,
39 c. (C.) (pending before the Legislature as this bill), to be
40 legally able to connect to service, having a slope of less than 15
41 percent, and that is not:

42 (1) land that is owned by a local government entity that as of the
43 effective date of P.L. , c. (C.) (pending before the Legislature
44 as this bill), has adopted, prior to the institution of a lawsuit seeking
45 a builder's remedy, a resolution authorizing an execution of
46 agreement that the land be utilized for a public purpose other than
47 housing;

1 (2) any land listed on a master plan of a municipality as being
2 dedicated, by easement or otherwise, for purposes of conservation,
3 park lands or open space and which is owned, leased, licensed, or in
4 any manner operated by a county, municipality or tax-exempt,
5 nonprofit organization including a local board of education, or by
6 more than one municipality by joint agreement pursuant to the
7 "Uniform Shared Services and Consolidation Act," P.L.2007, c.63
8 (C.40A:65-1 et seq.), for so long as the entity maintains such
9 ownership, lease, license, or operational control of such land;

10 (3) any vacant contiguous parcels of land in private ownership
11 of a size which would accommodate fewer than five housing units if
12 the economic viability standards of the department were applied
13 pertaining to housing density;

14 (4) historic and architecturally important sites listed on the State
15 Register of Historic Places or National Register of Historic Places
16 prior to the effective date of P.L. , c. (C.) (pending before the
17 Legislature as this bill);

18 (5) agricultural lands when the development rights to these
19 lands have been purchased or restricted by covenant;

20 (6) sites designated for active recreation that are designated for
21 recreational purposes in the municipal master plan; and

22 (7) environmentally sensitive lands where development is
23 prohibited by any State or federal agency, including prohibitions
24 pursuant to the "Freshwater Wetlands Protection Act," P.L.1987,
25 c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979,
26 c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act,"
27 P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water
28 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.),
29 the federal Clean Water Act, 33U.S.C. ss.1251 et seq., or the
30 "Hackensack Meadowlands Reclamation and Development Act^{1, 1}"
31 P.L.1968, c.404 (C.13:17-1 et seq.).

32 Developable land shall include existing structures that are
33 appropriate for conversion to or rehabilitation for housing,
34 including, but not limited to, structures abandoned or underutilized.

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

41 "Low income housing" means housing affordable according to
42 federal Department of Housing and Urban Development or other
43 recognized standards for home ownership and rental costs and
44 occupied or reserved for occupancy by households with a gross
45 household income equal to 50 percent or less of the median gross
46 household income for households of the same size within the
47 housing region in which the housing is located.

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

8 "Person with a disability" means a person with a physical
9 disability, infirmity, malformation or disfigurement which is caused
10 by bodily injury, birth defect, aging or illness including epilepsy
11 and other seizure disorders, and which shall include, but not be
12 limited to, any degree of paralysis, amputation, lack of physical
13 coordination, blindness or visual impediment, deafness or hearing
14 impediment, muteness or speech impediment or physical reliance on
15 a service or guide dog, wheelchair, or other remedial appliance or
16 device.

17 "Qualified housing units" means the sum of housing units that
18 are very low income housing, low income housing, moderate
19 income housing, mobile home units, public housing units, and units
20 whose deeds contain sale, resale or transfer price restrictions
21 because the units were financed by federal Low Income Housing
22 Tax Credits, received project-based assistance under the program
23 authorized pursuant to section 8 of the United States Housing Act of
24 1937 as added by the Housing and Community Development Act of
25 1974, Pub.L.93-383 (42U.S.C. s. 1437f), or received financing from
26 funds received pursuant to a Regional Contribution Agreement;
27 provided, that any qualified units shall be adaptable, as required by
28 section 1 of P.L.2005, c.350 (C.52:27D-311a).

29 "Qualified low income housing units" means housing units that
30 are affordable to and occupied by households earning no more than
31 50 percent of the median income for the region in which the
32 municipality is located, as adjusted for family size, and which are
33 subject to affordability controls.

34 "Qualified moderate income housing units" means housing that
35 is affordable to and occupied by households earning no more than
36 80 percent of the median income for the region in which the
37 municipality is located, as adjusted for family size, and which is
38 subject to affordability controls.

39 "Qualified very low income housing units" means housing units
40 that are affordable to and occupied by households earning no more
41 than 30 percent of the median income for the region in which the
42 municipality is located, as adjusted for family size, and which are
43 subject to affordability controls.

44 "Rehabilitation project" means a "gut rehabilitation" project
45 where the extent and nature of the work is such that the work area
46 cannot be occupied while the work is in progress and where a new
47 certificate of occupancy is required before the work area can be
48 reoccupied, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-

1 6. Reconstruction shall not include projects comprised only of floor
2 finish replacement, painting or wallpapering, or the replacement of
3 equipment or furnishings. Asbestos hazard abatement and lead
4 hazard abatement projects shall not be classified as reconstruction
5 solely because occupancy of the work area is not permitted.

6 "Residential development project" means a new construction or
7 any residential development project requiring a new certificate of
8 occupancy, including, but not limited to any redevelopment,
9 rehabilitation, infill development, or adaptive reuse of property. A
10 "new residential development project" shall not mean any
11 construction or reconstruction of a single-family dwelling that is
12 occupied by, or intended to be occupied by, the owner.

13 "Supportive and special needs housing" means homes for persons
14 with developmental disabilities and mental illness that are designed
15 as permanent housing, and licensed or regulated by the New Jersey
16 Department of Human Services; permanent supportive housing; and
17 permanent supportive shared living housing. This term does not
18 include housing restricted to occupancy by persons under 18 years
19 of age.

20 "Very low income housing" means housing affordable according
21 to federal Department of Housing and Urban Development or other
22 recognized standards for home ownership and rental costs and
23 occupied or reserved for occupancy by households with a gross
24 household income equal to 30 percent or less of the median gross
25 household income for households of the same size within the
26 housing region in which the housing is located.

27
28 '[21.] 23.' (New section) a. A municipality shall meet its
29 compliance threshold if it demonstrates that:

30 (1) '[12] 10' percent of its total current housing stock is
31 qualified housing units; or

32 (2) at least 25, but less than 50, percent of the children enrolled
33 in schools in the municipality in October of the preceding year were
34 eligible for free or reduced price meals under the federal School
35 Lunch Program.

36 b. For purposes of counting towards a compliance threshold
37 determined pursuant to (1) in subsection a. of this section:

38 (1) at least 50 percent of the total number of qualified housing
39 units in any municipality shall be qualified low income units; and

40 (2) no more than 25 percent of the total number of qualified low
41 income housing units and qualified moderate income housing units
42 in any municipality shall be age-restricted units as defined pursuant
43 to section 2 of P.L.2009, c.82 (C.45:22A-46.4).

44 c. Each permanent supportive housing unit that receives a
45 certificate of occupancy following the effective date of P.L. , c.
46 (C.) (pending before the Legislature as this bill), shall be
47 counted as two units of qualified housing in the municipality in
48 which the unit is located. Each new unit of housing for persons with

1 developmental disabilities or mental illness, designed as permanent
2 housing, and regulated by the New Jersey Department of Human
3 Services, shall be counted as one and one-quarter unit of qualified
4 housing in the municipality in which the unit is located. Each new
5 bedroom in permanent supportive shared living housing created
6 following the effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill), shall be counted as one and one-quarter
8 unit of qualified housing in the municipality in which the unit is
9 located. The total added additional units counted pursuant to this
10 subsection shall not exceed 25 percent of the number of housing
11 units affordable to low- and moderate-income people counted to
12 determine that a municipality is a compliant municipality.

13 d. A municipality that is a compliant municipality pursuant to
14 this section shall remain a compliant municipality as long as the
15 requirements of this section are met, and the affordability controls
16 on any required qualified housing units remain in effect. At the time
17 the municipality files a resolution, pursuant to subsection e. of this
18 section, the Department shall review affordability controls in effect
19 for qualified units, where relevant, for compliance with the
20 requirements of P.L. , c. (C.) (pending before the Legislature as
21 this bill).

22 e. To demonstrate that it has met the compliance threshold, a
23 municipal governing body shall adopt a resolution containing an
24 analysis of data demonstrating that it met its threshold. Each
25 municipality adopting a resolution pursuant to this section shall file
26 the resolution and other relevant information with the Department
27 in an electronic format.

28 f. Any municipality demonstrating that it has met the
29 compliance threshold pursuant to this section shall submit an
30 analysis calculating the number of existing substandard housing
31 units in the municipality occupied by low and moderate income
32 families, and a plan for rehabilitating at least ¹~~['those]~~ that number
33 of¹ units within the next ¹~~['ten]~~ 10¹ years.

34 g. The department shall make any ordinances or housing
35 element filed by a municipality available on the website established
36 pursuant to section ¹~~['27]~~ 30¹ of P.L. , c. (C.) (pending
37 before the Legislature as this bill).

38 h. Upon receipt of a municipality's filing, the Commissioner of
39 Community Affairs will undertake a review of the municipality's
40 filing, for the sole purpose of determining whether the filing
41 accurately and completely represents the required composition of
42 the municipal housing stock and ordinances in conformance with
43 the requirements of this section.

44 ¹For purposes of this section, a municipality may rely upon a
45 determination of the number of children enrolled in schools in the
46 municipality in October of the preceding year that are eligible for

1 free or reduced price meals under the federal School Lunch
2 Program need for a period of up to 10 years.¹

3
4 ¹[22.] 24.¹ (New section) a. Notwithstanding the provisions of
5 section ¹[21] 23¹ of P.L. , c. (C.) (pending before the
6 Legislature as this bill) a municipality may be deemed to be a
7 compliant municipality if it adopts an ordinance providing that at
8 least 20 percent of its developable property is zoned for use as
9 housing affordable to, according to federal Department of Housing
10 and Urban Development or other recognized standards for home
11 ownership and rental costs, and occupied by, or reserved for
12 occupancy by, households with a gross household income equal to
13 or less than 150 percent of the median gross household income for
14 households of the same size within the housing region in which the
15 housing is located, and zoning permitting minimum presumptive
16 densities as follows:

17 (1) Residential development resulting in single-family, detached
18 homes must allow for such development at a minimum gross
19 density of at least 4 dwelling units or greater per acre; and

20 (2) Residential development resulting in attached townhouses or
21 multi-family must allow for such development at a minimum gross
22 density of at least 8 dwelling units per acre.

23 When developable land in a municipality is subject to a federal
24 or State law or regulation that permits development, but restrict the
25 gross average density of a parcel or portion of a parcel to a density
26 below that specified by this subsection, a municipality shall comply
27 with this section by zoning for the greatest average density allowed
28 by law.

29 b. As a prerequisite to being deemed compliant pursuant to this
30 section, a municipality shall submit an analysis calculating the
31 number of existing substandard housing units in the municipality
32 occupied by low and moderate income families and a plan for
33 rehabilitating at least those units within the next ¹[ten] 10¹ years.

34 c. Any municipality adopting an ordinance, a housing element,
35 or a rehabilitation plan pursuant to this section shall file its zoning
36 and development ordinances, housing element, or rehabilitation
37 plan with the Department in an electronic format. The Department
38 of Community Affairs shall make the filings available through the
39 internet website established pursuant to section ¹[27] 30¹ of
40 P.L. , c. (C.) (pending before the Legislature as this bill).

41 d. Upon receipt of a municipality's filing, the Commissioner of
42 Community Affairs will undertake a review of the municipality's
43 filing, for the sole purpose of determining whether the filing
44 accurately and completely represents the required composition of
45 the municipal housing stock and ordinances in conformance with
46 the requirements of this section.

1 '25. (New section) a. Notwithstanding the provisions of section
2 23 of P.L. , c. (C.) (pending before the Legislature as this
3 bill) a municipality may be deemed to be a compliant municipality
4 if it adopts and files a housing element, prepared pursuant to section
5 10 of P.L.1985, c.222 (C.52:27D-310), with the department.

6 b. The housing element may provide for the qualified units
7 described in paragraph (1) of subsection a. of section 23 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) by means
9 of any technique approved by the department, including, but not
10 limited to, inclusionary zoning, and the creation of opportunities for
11 affordable housing through development including, but not limited
12 to, new construction, rehabilitation, and redevelopment. The
13 housing element shall take into consideration any weighted
14 counting authorized by subsection c. of section 23 of P.L. , c.
15 (C.) (pending before the Legislature as this bill). The
16 department shall approve at least the following techniques for
17 providing opportunities for affordable housing:

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

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

22 (3) Permitting a developer to pay a development fee in lieu of
23 constructing a portion of the inclusionary units into a municipal
24 trust fund for the construction of affordable housing pursuant to
25 section 34 of P.L. , c. (C.) (pending before the Legislature
26 as this bill);

27 (4) Assisting a municipally-sponsored 100 percent affordable
28 development;

29 (5) Permitting construction of Elder Cottage Housing
30 Opportunity units;

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

33 (7) Permitting the purchase or subsidization of units that are
34 subsequently sold or rented to low- and moderate-income
35 households at affordable sale prices or rents ("buy down, write
36 down");

37 (8) Permitting the construction of an assisted living residence in
38 which all or a designated number of units are restricted to low- or
39 moderate-income households.

40 c. The governing body of a municipality seeking to be deemed
41 compliant pursuant to this section shall, by ordinance, require a
42 professional planner or consultant regularly employed or retained
43 by the planning board or zoning board of adjustment for the
44 municipality to certify to the accuracy and veracity of the element.

45 d. Prior to filing the plan with the department, the county
46 planning board by resolution shall adopt the housing element. In
47 adopting the housing element or any amendment thereto the board
48 shall hold at least one public hearing for presentation and review of

1 the housing element. Notice of the time and place of the meeting
 2 shall be given by one publication in a newspaper of general
 3 circulation in the county and by the transmission by delivery or by
 4 certified mail, at least 20 days prior to such hearing. The
 5 department shall provide any technical assistance required by the
 6 county planning board.

7 e. The municipality shall act in good faith in complying with the
 8 requirements of this section, including preparation of the housing
 9 element. To continue being deemed compliant pursuant to this
 10 section, the municipality shall submit interim status updates
 11 demonstrating that the municipality is affirmatively complying with
 12 the requirements of this section.

13 f. Any housing element filed pursuant to this section shall
 14 identify, with specificity, the site of any qualified units that shall be
 15 built and are relied upon to meet the compliance threshold.¹

16
 17 ¹~~[[23.]]~~ 26.¹ (New section) a. Any municipality in which 50
 18 percent or more of the children enrolled in schools in the
 19 municipality in October of the preceding year were eligible for free
 20 or reduced price meals under the federal School Lunch Program
 21 shall be compliant pursuant to P.L. , c. (C.) upon filing an
 22 analysis calculating the number of existing substandard housing
 23 units in the municipality occupied by low and moderate income
 24 families, and a plan for rehabilitating at least those units within the
 25 next ¹~~[[ten]]~~ 10¹ years.

26 b. Nothing in this section shall be construed to prohibit a
 27 municipality from adopting an ordinance requiring that units
 28 proposed as part of a residential development project be set aside
 29 for low- or moderate-income households, or establishing an
 30 affordable housing trust fund and adopting corresponding fee
 31 ordinances, pursuant to paragraph (2) of subsection b. of section
 32 ¹~~[[25]]~~ 28¹ of P.L. , c. (C.) (pending before the Legislature as
 33 this bill) and section 8 of P.L.2008, c.46 (C.52:27D-329.2).

34 ¹For purposes of this section, a municipality may rely upon a
 35 determination of the number of children enrolled in schools in the
 36 municipality in October of the preceding year that are eligible for
 37 free or reduced price meals under the federal School Lunch
 38 Program need for a period of up to 10 years.¹

39
 40 ¹~~[[24.]]~~ 27.¹ (New section) a. In a municipality that is not a
 41 compliant municipality pursuant to section ¹~~[[21]]~~ 23¹ of P.L. , c.
 42 (C.) (pending before the Legislature as this bill), or deemed
 43 compliant pursuant to section ¹~~[[22]]~~ 24 of P.L. , c. (C.) pending
 44 before the Legislature as this bill) or pursuant to section 25¹ of
 45 P.L. , c. (C.) (pending before the Legislature as this bill), a
 46 developer requesting a variance or other relief pursuant to
 47 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70) for a

1 proposed development, in which at least **'[10] 20'** percent of any
2 dwelling units are set aside for housing affordable to low income
3 and moderate income households, shall be required to make only a
4 showing that the variance or other relief can be granted without
5 substantial detriment to the public good **'[and will not substantially**
6 **impair the intent and the purpose of the zone plan and zoning**
7 **ordinance]'** . A development proposed pursuant to this subsection
8 shall be deemed to be inherently beneficial'.

9 b. The provisions of this section shall only apply to
10 applications under the "Municipal Land Use Law," P.L.1975, c.210
11 (C.40:55D-1 et **'[al.] seq.'**) concerning lots or parcels within a
12 municipality's developable property.
13

14 **'[25.] 28.'** (New section) a. Every municipality of the State,
15 except municipalities described in section **'[23] 26'** of P.L. , c.
16 (C.) (pending before the Legislature as this bill) shall require that
17 no less than 10 percent of the residential housing units proposed as
18 part of any new residential development project resulting in 10 or
19 more units be reserved for occupancy as low income or moderate
20 income housing.

21 b. (1) The municipality may waive, by resolution or ordinance of
22 the governing body, the requirement of this section that an
23 individual development include a set-aside of qualified units,
24 provided that, at the time the municipality and developer enter into
25 and execute any developer's agreement that proposes 10 or more
26 units, the developer's agreement contains provisions identifying one
27 or more activities that will result in creation of a number of new
28 qualified housing units elsewhere in the municipality that is no less
29 than the number that would have been required in the development
30 pursuant to subsection a. of this section.

31 (2) The municipality may waive, by resolution or ordinance of
32 the governing body, the requirement of this section that an
33 individual development include a set-aside of qualified units,
34 provided that any such resolution shall require that a developer
35 proposing **'[ten units or] 10 or more units'** pays a development
36 fee instead of actually constructing the affordable units. A
37 developer of a project in a municipality that has met its compliance
38 threshold pursuant to section **'[21] 23'** of P.L. , c¹.¹ (C.)
39 (pending before the Legislature as this bill) shall make a payment of
40 two **'and one-half'** percent of the equalized assessed value of the
41 development, and a developer in any other municipality **'[makes]**
42 **shall make'** a payment of three percent **'and one-half'** of the
43 equalized assessed value of the development, into the municipal
44 affordable housing trust fund as a precondition to issuance of a
45 certificate of occupancy.

46 (3) The municipality may waive, by resolution or ordinance of
47 the governing body, the requirement of this section that an

1 individual development include a set-aside of qualified units,
2 provided that, at the time the municipality and developer enter into
3 and execute any developer's agreement that proposes 10 or more
4 units, the developer's agreement contains provisions identifying one
5 or more rehabilitation projects that will result in creation of a
6 number of qualified housing units elsewhere in the municipality that
7 is no less than the number that would have been required in the
8 development pursuant to subsection a. of this section.

9 **'[(4)] c.'** The municipality shall modify zoning ordinances to
10 authorize an increase in gross average density to facilitate the
11 economic viability of any residential development to which this
12 section applies. 'A municipality, in evaluating the economic
13 viability of an application for an inclusionary development, may be
14 guided by the applicable provisions of N.J.A.C.5:96 and
15 N.J.A.C.5:97, the regulations of the Council on Affordable Housing
16 for the housing round beginning June 2, 2008.'

17 **'[c.] d.'** For any new residential development project resulting
18 in the production of fewer than 10 units, the developer shall pay a
19 residential development fee of one and one-half percent of the
20 equalized assessed value of the project at completion, or a
21 municipality shall require that five percent of residential housing
22 units proposed as part of that project be reserved for occupancy as
23 low-income or moderate- income housing. For the purposes of this
24 reservation, one special needs housing unit shall count as two
25 housing units.

26 **'[d.] e.'** A municipality shall be permitted to give preference
27 for occupancy for up to 25 percent of the low and moderate income
28 units required to be provided pursuant to this section to those
29 households that have at least one member who works or resides in
30 the municipality.

31 **'[e.] f.'** The low and moderate income units required to be
32 provided pursuant to this section shall be subject to affordability
33 controls of not less than 30 years' duration.

34 **'[f.] g.'** Any residential development which has received final
35 approval pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50)
36 on or before the effective date of P.L. , c. '(C._____).' (pending
37 before the Legislature as this bill) and proceeds based on those
38 approvals without seeking a revised approval shall be exempt from
39 any set-aside requirement created by P.L. , c. '(C._____).'
40 (pending before the Legislature as this bill) and the terms of the
41 approval previously issued by the municipality shall govern the
42 development.

43 **'[g.] h.'** Half of the units reserved for low-income or moderate-
44 income housing pursuant to this section shall be reserved for low-
45 income housing and half the units shall be reserved for moderate-
46 income housing. If an odd number of affordable units is being

1 constructed, rehabilitated or developed pursuant to this section, the
2 higher number of units may be determined by the municipality.

3 i.¹ A municipality shall not impose any additional financial or
4 other obligation related to affordable housing on a developer that
5 has complied with the provisions of this section.

6
7 '[26.] 29.¹ (New section) The Department of Community
8 Affairs, Department of Environmental Protection, and the
9 Department Transportation shall promulgate regulations to provide
10 that a municipality that has filed with the Department of
11 Community Affairs as a compliant municipality, a municipality
12 deemed compliant pursuant to section '[22] 24 of P.L. _____, c.
13 (C. _____) (pending before the Legislature as this bill) or pursuant to
14 section 25¹ of P.L. _____, c. (C. _____) (pending before the Legislature
15 as this bill), or a municipality described by section 23 of P.L. _____, c.
16 (C. _____) (pending before the Legislature as this bill) shall receive
17 preference with respect to discretionary grant programs
18 administered by those departments for which municipal
19 governments are eligible, and shall prioritize and expedite
20 applications from developments included in a housing element
21 prepared and filed pursuant to P.L. _____, c.¹ (C. _____) (pending
22 before the Legislature as this bill).

23
24 '[27.] 30.¹ (New section) a. The Department shall design,
25 establish, and maintain a searchable Internet website accessible to
26 the general public for no charge. This website shall contain data and
27 information concerning affordable housing in each municipality of
28 the State. The Department may consult with the Division of
29 Information Technology in the Department of the Treasury in order
30 to develop the Internet website.

31 b. At least the following information about each municipality
32 shall be made available on the website:

33 (1) the total number of additional housing units created and the
34 number lost through demolition or other causes since the effective
35 date of P.L. _____, c. (C. _____) (pending before the Legislature as this
36 bill) in the municipality;

37 (2) the number of additional housing units created in the
38 municipality that are qualified very low income, low income or
39 moderate income housing and an itemized listing of these units,
40 whether they are restricted to seniors or people with special needs,
41 and the income levels served;

42 (3) the number of previously existing qualified very low income,
43 low income or qualified moderate income housing units which have
44 been demolished or are no longer subject to affordability controls;

45 (4) the amount of development fees collected and uses for these
46 fees as required pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)
47 and P.L. _____, c. (pending before the legislature as this bill); and

(5) Housing elements and amendments to municipal housing elements required to be posted pursuant to P.L. , c. (pending before the Legislature as this bill).

c. Each municipality shall annually report the information described in subsection b. of this section to the Department. The Department shall ensure that the information is available to the public on the website within seven business days of receipt. To facilitate this process, the Department may choose to create a system in which municipalities may directly enter this information in the internet website established pursuant to this section.

¹[28.] 31.¹ (New section) a. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall require a municipality to raise or expend municipal revenues in order to provide a realistic opportunity for low and moderate income housing.

b. Notwithstanding any law or rule to the contrary, a municipality shall not alter the zoning ¹['classification']¹ of any development site during the period that the site is ¹or was¹ subject to a judgment of repose, or was, by court order, mediation settlement, or settlement in exclusionary zoning litigation, designated or reserved for purposes of affordable housing.

c. Except as provided in subsection b., for any litigation involving exclusionary zoning instituted prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), jurisdiction may remain with the court, which shall take judicial notice of the statutory intent stated hereunder.

¹d. No exclusionary zoning action naming a municipality as a defendant shall be filed for 365 days following the effective date of this act.¹

¹[29.] 32.¹ Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to read as follows:

34. As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

¹["Council" means the Council on Affordable Housing, established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to

1 purchase, or other person having an enforceable proprietary interest
2 in such land.

3 "Equalized assessed value" means the assessed value of a
4 property divided by the current average ratio of assessed to true
5 value for the municipality in which the property is situated, as
6 determined in accordance with sections 1, 5, and 6 of P.L.1973,
7 c.123 (C.54:1-35a through C.54:1-35c).

8 "Mixed use development" means any development which
9 includes both a non-residential development component and a
10 residential development component, and shall include developments
11 for which (1) there is a common developer for both the residential
12 development component and the non-residential development
13 component, provided that for purposes of this definition, multiple
14 persons and entities may be considered a common developer if there
15 is a contractual relationship among them obligating each entity to
16 develop at least a portion of the residential or non-residential
17 development, or both, or otherwise to contribute resources to the
18 development; and (2) the residential and non-residential
19 developments are located on the same lot or adjoining lots,
20 including but not limited to lots separated by a street, a river, or
21 another geographical feature.

22 "Non-residential development" means: (1) any building or
23 structure, or portion thereof, including but not limited to any
24 appurtenant improvements, which is designated to a use group other
25 than a residential use group according to the State Uniform
26 Construction Code promulgated to effectuate the "State Uniform
27 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
28 including any subsequent amendments or revisions thereto; (2)
29 hotels, motels, vacation timeshares, and child-care facilities; and (3)
30 the entirety of all continuing care facilities within a continuing care
31 retirement community which is subject to the "Continuing Care
32 Retirement Community Regulation and Financial Disclosure Act,"
33 P.L.1986, c.103 (C.52:27D-330 et seq.).

34 "Non-residential development fee" means the fee authorized to
35 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46
36 (C.40:55D-8.1 through C.40:55D-8.7).

37 "Relating to the provision of housing" shall be liberally
38 construed to include the construction, maintenance, or operation of
39 housing, including but not limited to the provision of services to
40 such housing and the funding of any of the above.

41 "Spending plan" means a method of allocating funds collected
42 and to be collected pursuant to an approved municipal development
43 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)
44 for the purpose of meeting the housing needs of low and moderate
45 income individuals.

46 "Treasurer" means the Treasurer of the State of New Jersey.
47 (cf: P.L.2008 c.46, s.34)

1 '【30.】 33.' Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is
2 amended to read as follows:

3 35. a. Beginning on the effective date of P.L.2008, c.46
4 (C.52:27D-329.1 et al.), a fee is imposed on all construction
5 resulting in non-residential development, as follows:

6 (1) A fee equal to two and one-half percent of the equalized
7 assessed value of the land and improvements, for all new non-
8 residential construction on an unimproved lot or lots; or

9 (2) A fee equal to two and one-half percent of the increase in
10 equalized assessed value, of the additions to existing structures to
11 be used for non-residential purposes[.]; provided, that the fee shall
12 be imposed as described in this section and phased in pursuant to
13 section '【33】 34' of P.L. , c. (C.) (pending before the
14 Legislature as this bill).

15 b. All non-residential construction of buildings or structures on
16 property used by churches, synagogues, mosques, and other houses
17 of worship, and property used for educational purposes, which is
18 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the
19 imposition of a non-residential development fee pursuant to this
20 section, provided that the property continues to maintain its tax
21 exempt status under that statute for a period of at least three years
22 from the date of issuance of the certificate of occupancy. In
23 addition, the following shall be exempt from the imposition of a
24 non-residential development fee:

25 (1) parking lots and parking structures, regardless of whether the
26 parking lot or parking structure is constructed in conjunction with a
27 non-residential development, such as an office building, or whether
28 the parking lot is developed as an independent non-residential
29 development;

30 (2) any non-residential development which is an amenity to be
31 made available to the public, including, but not limited to,
32 recreational facilities, community centers, and senior centers, which
33 are developed in conjunction with or funded by a non-residential
34 developer;

35 (3) non-residential construction resulting from a relocation of or
36 an on-site improvement to a nonprofit hospital or a nursing home
37 facility;

38 (4) projects that are located within a specifically delineated
39 urban transit hub, as defined pursuant to section 2 of P.L.2007,
40 c.346 (C.34:1B-208);

41 (5) projects that are located within an eligible municipality, as
42 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a
43 majority of the project is located within a one-half mile radius of
44 the midpoint of a platform area for a light rail system; **[and]**

45 (6) projects determined by the New Jersey Transit Corporation
46 to be consistent with a transit village plan developed by a transit
47 village designated by the Department of Transportation.

1 A [developer of a] non-residential development exempted from
2 the non-residential development fee pursuant to this section shall be
3 subject to [it] the fee at such time the basis for the exemption set
4 forth in this subsection no longer applies, and the owner of the
5 property at that time shall make the payment of the non-residential
6 development fee[, in that event,] within three years after that event
7 or after the issuance of the final certificate of occupancy of the non-
8 residential development, whichever is later.

9 For purposes of this subsection, "recreational facilities and
10 community center" means any indoor or outdoor buildings, spaces,
11 structures, or improvements intended for active or passive
12 recreation, including but not limited to ball fields, meeting halls,
13 and classrooms, accommodating either organized or informal
14 activity; and "senior center" means any recreational facility or
15 community center with activities and services oriented towards
16 serving senior citizens.

17 If a property which was exempted from the collection of a non-
18 residential development fee thereafter ceases to be exempt from
19 property taxation, the owner of the property shall remit the fees
20 required pursuant to this section within 45 days of the termination
21 of the property tax exemption. Unpaid non-residential development
22 fees under these circumstances may be enforceable by the
23 municipality as a lien against the real property of the owner.

24 c. [(1) Unless authorized to pay directly to the municipality in
25 which the non-residential construction is occurring in accordance
26 with paragraph (2) of this subsection, developers shall pay non-
27 residential development fees imposed pursuant to P.L.2008, c.46
28 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with
29 subsection g. of this section in a manner and on such forms as
30 required by the Treasurer, provided that a certified proof concerning
31 the payment shall be furnished by the Treasurer, to the
32 municipality.

33 (2) The council shall maintain on its website a list of each
34 municipality that is authorized to use the development fees
35 collected pursuant to this section and that has a confirmed status of
36 compliance with the "Fair Housing Act," P.L.1985, c.222
37 (C.52:27D-301 et al.), which compliance shall include a spending
38 plan authorized by the council for all development fees collected.]
39 (Deleted by amendment, P.L. __, c. '[(C.)' __). '[I]'

40 d. The payment of non-residential development fees required
41 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
42 through C.40:55D-8.7) shall be made prior to the issuance of a
43 certificate of occupancy for such development. A final certificate
44 of occupancy shall not be issued for any non-residential
45 development until such time as the fee imposed pursuant to this
46 section has been paid by the developer. A non-residential developer
47 may deposit with the appropriate entity the development fees as

1 calculated by the municipality under protest, and the local code
2 enforcement official shall thereafter issue the certificate of
3 occupancy provided that the construction is otherwise eligible for a
4 certificate of occupancy.

5 e. The construction official responsible for the issuance of a
6 building permit shall notify the local tax assessor of the issuance of
7 the first building permit for a development which may be subject to
8 a non-residential development fee. Within 90 days of receipt of that
9 notice, the municipal tax assessor, based on the plans filed, shall
10 provide an estimate of the equalized assessed value of the non-
11 residential development. The construction official responsible for
12 the issuance of a final certificate of occupancy shall notify the local
13 assessor of any and all requests for the scheduling of a final
14 inspection on property which may be subject to a non-residential
15 development fee. Within 10 business days of a request for the
16 scheduling of a final inspection, the municipal assessor shall
17 confirm or modify the previously estimated equalized assessed
18 value of the improvements of the non-residential development in
19 accordance with the regulations adopted by the Treasurer pursuant
20 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
21 development fee pursuant to sections 32 through 38 of P.L.2008,
22 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the
23 developer of the amount of the non-residential development fee.
24 Should the municipality fail to determine or notify the developer of
25 the amount of the non-residential development fee within 10
26 business days of the request for final inspection, the developer may
27 estimate the amount due and pay that estimated amount consistent
28 with the dispute process set forth in subsection b. of section 37 of
29 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-
30 residential development fee, provided the developer is in full
31 compliance with all other applicable laws, the municipality shall
32 issue a final certificate of occupancy for the subject property.
33 Failure of the municipality to comply with the timeframes or
34 procedures set forth in this subsection may subject it to penalties to
35 be imposed by the commissioner; any penalties so imposed shall be
36 deposited into the "New Jersey Affordable Housing Trust Fund"
37 established pursuant to section 20 of P.L.1985, c.222 as amended
38 by section 17 of P.L.2008, c.46 (C.52:27D-320).

39 A developer of a mixed use development shall be required to pay
40 the Statewide non-residential development fee relating to the non-
41 residential development component of a mixed use development
42 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).
43 Non-residential construction which is connected with the relocation
44 of the facilities of a for-profit hospital shall be subject to the fee
45 authorized to be imposed under this section to the extent of the
46 increase in equalized assessed valuation in accordance with
47 regulations to be promulgated by the Director of the Division of
48 Taxation, Department of the Treasury.

1 f. Any municipality that is not in compliance with the
 2 requirements established pursuant to sections 32 through 38 of
 3 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or
 4 regulations of the **【council】** department adopted thereto, may be
 5 subject to forfeiture of any or all funds remaining within its
 6 municipal development trust fund. Any funds so forfeited shall be
 7 deposited into the New Jersey Affordable Housing Trust Fund
 8 established pursuant to section 20 of P.L.1985, c.222 as amended
 9 by section 17 of P.L.2008, c.46 (C.52:27D-320) 'and shall be
 10 subject to the requirements of subsection b. of section 8 of
 11 P.L.2008, c.46 (C.52:27D-329.2).'¹.

12 g. **【The Treasurer shall credit to the "Urban Housing Assistance**
 13 **Fund," established pursuant to section 13 of P.L.2008, c.46**
 14 **(C.52:27D-329.7) annually from the receipts of the fees authorized**
 15 **to be imposed pursuant to this section an amount equal to \$20**
 16 **million; all receipts in excess of this amount shall be deposited into**
 17 **the "New Jersey Affordable Housing Trust Fund," established**
 18 **pursuant to section 20 of P.L.1985, c.222 as amended by section 17**
 19 **of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of**
 20 **that fund.】** ¹(¹Deleted by amendment, P.L. _____, c. **【(C.)**¹ _____)
 21 (pending before the Legislature as this bill).

22 h. The fee imposed pursuant to the "Statewide Non-Residential
 23 Development Fee Act," sections 32 through 38 of P.L.2008, c.46
 24 (C.40:55D-8.1 through C.40:55D-8.7), shall be collected by the
 25 municipality in which the non-residential development is located,
 26 pursuant to this section. Each amount collected shall be deposited
 27 and shall be accounted for separately, by payer and date of deposit.
 28 A municipality shall deposit 80 percent of all non-residential
 29 development fees collected into a trust fund dedicated to those
 30 purposes as set forth in section 34 of P.L. _____, c. (C. _____) (pending
 31 before the Legislature as this bill). The remaining 20 percent shall
 32 be transferred to the State Treasurer for deposit into the Urban
 33 Housing Assistance Fund pursuant to **【S】s**'ection 13 of P.L.2008,
 34 c.46 (C.52:27D-329.7).

35 The Treasurer shall adopt such regulations as necessary to
 36 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
 37 through C.40:55D-8.7), in accordance with the "Administrative
 38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
 39 (cf: P.L.2008, c.46, s.35)

40

41 ¹**【31.】** 34.¹ (New section) Beginning July 1, 2010, the fee
 42 imposed on all construction resulting in non-residential
 43 development pursuant to section 35 of P.L.2008, c.46 (C.40:55D-
 44 8.4) shall be phased in as follows:

45 a. No fee shall be imposed on projects receiving a construction
 46 permit in the two years next following the enactment date of P.L. _____,
 47 c. (C. _____) (pending before the Legislature as this bill).

1 b. For projects receiving construction permits in the third year
2 next following the enactment date of P.L. ¹/₂ c. (C.)
3 (pending before the Legislature as this bill), a fee equal to one
4 percent of the equalized assessed value of the land and
5 improvements shall be imposed on all new non-residential
6 construction on an unimproved lot or lots; and a fee equal to one
7 percent of the increase in equalized assessed value shall be imposed
8 on additions to existing structures to be used for non-residential
9 purposes.

10 c. For projects receiving construction permits in the fourth year
11 next following the enactment date of P.L. ¹/₂ c. (C.)
12 (pending before the Legislature as this bill) a fee equal to two
13 percent of the equalized assessed value of the land and
14 improvements shall be imposed on all new non-residential
15 construction on an unimproved lot or lots; and a fee equal to two
16 percent of the increase in equalized assessed value shall be imposed
17 on additions to existing structures to be used for non-residential
18 purposes.

19 d. For projects receiving construction permits in the fifth year
20 next following the enactment date of P.L. ¹/₂ c. (C.)
21 (pending before the Legislature as this bill) and later, a fee equal to
22 two and one half percent of the equalized assessed value of the land
23 and improvements shall be imposed on all new non-residential
24 construction on an unimproved lot or lots; and a fee equal to two
25 and one half percent of the increase in equalized assessed value
26 shall be imposed on additions to existing structures to be used for
27 non-residential purposes.

28

29 ¹[32.] 35. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is
30 amended to read as follows:

31 36. a. The commissioner, in consultation with the **【council】**
32 **Treasurer**, shall promulgate, in accordance with the provisions of
33 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
34 seq.), **【such】** regulations **【as are necessary for the prompt and**
35 **effective implementation of the provisions and purposes of**
36 **P.L.2008, c.46 (C.52:27D-329.1 et al.),】** concerning non-residential
37 development fees including, but not limited to, provisions for the
38 payment of any necessary administrative costs related to the
39 assessment of properties and collection of any development fees by
40 a municipality.

41 b. **【Notwithstanding the authority granted to the commissioner**
42 **herein, the council】** The commissioner shall adopt and promulgate,
43 in accordance with the provisions of the "Administrative Procedure
44 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are
45 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et
46 al.), including but not limited to, regulations necessary for the
47 establishment, implementation, review, monitoring, and

1 enforcement of a municipal affordable housing trust fund and
2 spending plan.

3 (cf: P.L.2008, c.46, s.36)

4
5 '【33.】 36.' Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is
6 amended to read as follows:

7 38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-
8 329.1 et al.) including subsection b. of this section, any provision of
9 a local ordinance which imposes a fee for the development of
10 affordable housing upon a developer of non-residential property,
11 including any and all development fee ordinances adopted in
12 accordance with any regulations of the 【Council on Affordable
13 Housing】 commissioner, or any provision of an ordinance which
14 imposes an obligation relating to the provision of housing
15 affordable to low and moderate income households, or payment in-
16 lieu of building as a condition of non-residential development, shall
17 be void and of no effect. A provision of an ordinance which
18 imposes a development fee which is not prohibited by any provision
19 of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated
20 by this section.

21 b. No affordable housing obligation shall be imposed
22 concerning a mixed use development that would result in an
23 affordable housing obligation greater than that which would have
24 been imposed if the residential portion of the mixed use
25 development had been developed independently of the non-
26 residential portion of the mixed use development.

27 c. Whenever the developer of a non-residential development
28 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
29 committed itself to make a financial or other contribution relating to
30 the provision of housing affordable to low and moderate income
31 households, the non-residential development fee authorized
32 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied
33 through the investment obligations made pursuant to P.L.1977,
34 c.110 (C.5:12-1 et seq.).

35 (cf: P.L.2008, c.46, s.38)

36
37 '【34.】 37.' Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is
38 amended to read as follows:

39 8. a. 【The council may authorize a municipality that has
40 petitioned for substantive certification, or that has been so
41 authorized by a court of competent jurisdiction, and which that has
42 adopted a municipal development fee】 A municipality may adopt an
43 ordinance to impose and collect 【development】 fees from
44 developers of residential property, in accordance with paragraph (2)
45 of subsection b. of section '【25】 28' of P.L. , c. (C.) and
46 rules promulgated by the 【council】 department. Each amount

1 collected shall be deposited and shall be accounted for separately,
2 by payer and date of deposit.

3 [A municipality may not spend or commit to spend any
4 affordable housing development fees, including Statewide non-
5 residential fees collected and deposited into the municipal
6 affordable housing trust fund, without first obtaining the council's
7 approval of the expenditure. The council shall promulgate
8 regulations regarding the establishment, administration and
9 enforcement of the expenditure of affordable housing development
10 fees by municipalities. The council shall have exclusive
11 jurisdiction regarding the enforcement of these regulations,
12 provided that any] Any municipality which is not in compliance
13 with the regulations adopted by the [council] department may be
14 subject to forfeiture of any or all funds remaining within its
15 municipal trust fund. Any funds so forfeited shall be deposited into
16 the "New Jersey Affordable Housing Trust Fund" established
17 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

18 b. A municipality shall deposit all fees collected, whether or
19 not such collections were derived from fees imposed upon non-
20 residential or residential construction into a trust fund dedicated to
21 those purposes as required under this section, and such additional
22 purposes as may be approved by the [council] department. 'Within
23 one year of the effective date of P.L. , c. (C.) (pending
24 before the Legislature as this bill), any municipality with funds
25 remaining in a municipal development trust fund and collected
26 pursuant to the "Statewide Non-Residential Development Fee Act,"
27 P.L.2008, c.46 P.L.2008, c.46 prior to the enactment date of P.L. ,
28 c. (C.) (pending before the Legislature as this bill) shall
29 develop and submit to the department a spending plan for those
30 funds.'¹

31 c. (1) A municipality may only spend development fees for an
32 activity approved by the [council] department to address the
33 municipal [fair share] affordable housing obligation.

34 (2) Municipal development trust funds shall not be expended to
35 reimburse municipalities for activities which occurred prior to the
36 authorization of a municipality to collect development fees.

37 (3) A municipality shall set aside a portion of its development
38 fee trust fund for the purpose of providing affordability assistance
39 to low and moderate income households in affordable units
40 [included in a municipal fair share plan, in accordance with rules of
41 the council].

42 (a) Affordability assistance programs may include down
43 payment assistance, security deposit assistance, low interest loans,
44 common maintenance expenses for units located in condominiums,
45 rental assistance, and any other program authorized by the
46 [council] department.

1 (b) Affordability assistance to households earning 30 percent or
2 less of median income may include buying down the cost of low
3 income units **[in a municipal fair share plan]** to make them
4 affordable to households earning 30 percent or less of median
5 income. The use of development fees in this manner shall not entitle
6 a municipality to bonus credits except as may be provided by the
7 rules of the **[council] department**.

8 (4) A municipality may contract with a private or public entity
9 to administer any part of its housing element and **[fair share]**
10 affordable housing plan, including the requirement for affordability
11 assistance, or any program or activity for which the municipality
12 expends development fee proceeds, in accordance with rules of the
13 **[council] department**.

14 (5) Not more than 20 percent of the revenues collected from
15 development fees shall be expended on administration, in
16 accordance with rules of the **[council] department**.

17 d. The **[council] department** shall establish a time by which all
18 development fees collected within a calendar year shall be
19 expended; provided, however, that all fees shall be committed for
20 expenditure within four years from the date of collection. A
21 municipality that fails to commit to expend the balance required in
22 the development fee trust fund by the time set forth in this section
23 shall be required by the **[council] department** to transfer the
24 remaining unspent balance at the end of the four-year period to the
25 "New Jersey Affordable Housing Trust Fund," established pursuant
26 to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by
27 P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the **[housing**
28 **region of the]** transferring municipality for the authorized purposes
29 of that fund.

30 e. Notwithstanding any provision of this section, or regulations
31 of the **[council] department**, a municipality shall not collect a
32 development fee from a developer whenever that developer is
33 providing for the construction of affordable units, either on-site or
34 elsewhere within the municipality.

35 **[This section shall not apply to the collection of a Statewide**
36 **development fee imposed upon non-residential development**
37 **pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1**
38 **et seq.) by the State Treasurer, when such collection is not**
39 **authorized to be retained by a municipality.]**

40 (cf: P.L.2008, c.46, s.8)

41
42 **'[35.] 38.'** (New section) It shall be the duty of the Department
43 of Community Affairs to administer the "Fair Housing Act,"
44 P.L.1985, c.222 (C.52:27D-301 et al.) and to assist municipalities in
45 implementing the provisions of the act. When appropriate, the
46 Commissioner Pursuant to the "Administrative Procedure Act,"
47 P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of

1 Community Affairs may promulgate any rules and regulations
 2 necessary to effectuate the purposes of P.L. , c. (C.) (pending
 3 before the Legislature as this bill), including:

4 a. Guidelines or model language for covenants or other devices
 5 to maintain the affordability of affordable units developed pursuant
 6 to P.L. , c. (C.) (pending before the Legislature as this bill);

7 b. Affirmative marketing requirements for affordable units,
 8 whether or not developed pursuant to section '[25] 28' of P.L. ,
 9 c. (C.) (pending before the Legislature as this bill);

10 c. Guidelines concerning the crediting and counting of qualified
 11 units;

12 d. Guidelines concerning the application of covenants or other
 13 affordability controls for affordable units; and

14 e. Guidelines for zoning to assure the economic viability of a
 15 project.

16
 17 '[36.] 39.' (New section) The provisions of P.L. , c. (C.)
 18 (pending before the Legislature as this bill) shall be severable, and
 19 if any of its provisions shall be held to be unconstitutional, the
 20 decision of the court shall not affect the validity of the remaining
 21 provisions of P.L. , c. (C.) (pending before the Legislature as
 22 this bill).

23
 24 '40. (New section) Within two years of the effective date of
 25 P.L. , c. (C.) (pending before the Legislature as this bill), the
 26 Department of Community Affairs shall report to the Legislature
 27 assessing and evaluating the progress and results of affordable
 28 housing efforts in New Jersey following the enactment of P.L. , c.
 29 (C.) (pending before the Legislature as this bill). The report shall
 30 be forwarded to the Assembly Housing and Local Government
 31 Committee or its successor.'

32
 33 '[37.] 41.' The following sections are repealed:

34 Section 14 of P.L.2009, c.82 (C.45:22A-46.16);

35 Section 5 of P.L.1985 c.222 (C.52:27D-304);

36 Section 5 of P.L.1985 c.222 (C.52:27D-305);

37 Section 6 of P.L.1985, c.222 (C.52:27D-306);

38 Section 7 of P.L.1985, c.222 (C.52:27D-307);

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

40 Section 8 of P.L.1985, c.222 (C.52:27D-308);

41 Section 9 of P.L.1985, c.222 (C.52:27D-309);

42 '[Section 10 of P.L.1985, c.222 (C.52:27D-310);]'

43 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);

44 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);

45 Section 11 of P.L.1985, c.222 (C.52:27D-311);

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

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

1 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
 2 Section 14 of P.L.1985 c.222 (C.52:27D-314);
 3 Section 15 of P.L.1985 c.222 (C.52:27D-315);
 4 Section 16 of P.L.1985, c.222 (C.52:27D-316);
 5 Section 17 of P.L.1985, c.222 (C.52:27D-317);
 6 Section 18 of P.L.1985, c.222 (C.52:27D-318);
 7 Section 19 of P.L.1985 c.222 (C.52:27D-319);
 8 Section 22 of P.L.1985, c.222 (C.52:27D-322);
 9 Section 28 of P.L.1985, c.222 (C.52:27D-328);
 10 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
 11 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
 12 Section 12 of P.L.2008, c.46 (C.52:27D-329.6);
 13 Section 14 of P.L.2008, c.46 (C.52:27D-329.8);
 14 Section 21 of P.L.2008, c.46 (C.52:27D-329.10);
 15 Section 22 of P.L.2008, c.46 (C.52:27D-329.11);
 16 Section 23 of P.L.2008, c.46 (C.52:27D-329.12);
 17 Section 24 of P.L.2008, c.46 (C.52:27D-329.13);
 18 Section 25 of P.L.2008, c.46 (C.52:27D-329.14);
 19 Section 26 of P.L.2008, c.46 (C.52:27D-329.15);
 20 Section 27 of P.L.2008, c.46 (C.52:27D-329.16)
 21 Section 28 of P.L.2008, c.46 (C.52:27D-329.17)
 22 Section 29 of P.L.2008, c.46 (C.52:27D-329.18); and
 23 Section 30 of P.L.2008, c.46 (C.52:27D-329.19).

24
 25 ¹[38.] 42.¹ This act shall take effect on the first day of the fourth
 26 month next following enactment.