

SENATE, No. 2629

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 8, 2014

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

**Senators Thompson, Beck, A.R.Bucco, Pennacchio, Cardinale, Addiego,
O'Toole, Kyrillos and T.Kean**

SYNOPSIS

Reforms procedures concerning provision of affordable housing; reinstates moratorium on Statewide non-residential development fees until January 2015.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning affordable housing and the Statewide non-
2 residential development fee, and amending, supplementing and
3 repealing various parts of the statutory law.

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

7
8 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
9 read as follows:

10 37. a. The provisions of this subsection shall not apply to a
11 financial or other contribution that a developer made or committed
12 itself to make prior to the effective date of sections 32 through 38 of
13 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
14 provisions of P.L.2008, c.46 that would permit the imposition of a
15 fee upon a developer of non-residential property shall not apply to:

16 (1) Non-residential property for which a site plan has received
17 either preliminary approval, pursuant to section 34 of P.L.1975,
18 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
19 P.L.1975, c.291 (C.40:55D-50), prior to **[July] January 1, [2013]**
20 2015 including, but not limited to, the time period commencing on
21 July 1, 2013 through the effective date of P.L. , c. (pending
22 before the Legislature as this bill); provided that a permit for the
23 construction of the building has been issued by the local enforcing
24 agency having jurisdiction, in accordance with section 13 of
25 P.L.1975, c.217 (C.52:27D-131), prior to **[January] July 1, [2015]**
26 2016;

27 (2) A non-residential planned development which has received
28 approval of a general development plan pursuant to section 5 of
29 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
30 for which the developer has entered into a developer's agreement
31 pursuant to a development approval granted pursuant to P.L.1975,
32 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
33 into a redevelopment agreement pursuant to P.L.1992, c.79
34 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
35 (C.52:27D-329.1 et al.); provided, however, that the general
36 development plan, developer's agreement, redevelopment
37 agreement, or any development agreement pursuant to the
38 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
39 provides that the developer or redeveloper pay a fee for affordable
40 housing of at least one percent of the equalized assessed value of
41 the improvements which are the subject of the development plan,
42 developer's agreement, or redevelopment agreement;

43 (3) A non-residential project that, prior to **[July] January 1,**
44 **[2013] 2015 including, but not limited to, the time period**
45 commencing on July 1, 2013 through the effective date of P.L. ,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. (pending before the Legislature as this bill), has been referred
2 to a planning board by the State, a governing body, or other public
3 agency for review pursuant to section 22 of P.L.1975, c.291
4 (C.40:55D-31); provided that a permit for the construction of the
5 building has been issued by the local enforcing agency having
6 jurisdiction, in accordance with section 13 of P.L.1975, c.217
7 (C.52:27D-131), prior to **【January】** July 1, 【2015】 2016;

8 (4) A non-residential property for which a site plan application
9 has received approval by the New Jersey Meadowlands
10 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
11 14) prior to **【July】** January 1, 【2013】 2015 including, but not
12 limited to, the time period commencing on July 1, 2013 through the
13 effective date of P.L. , c. (pending before the Legislature as this
14 bill); provided that a permit for the construction of the building has
15 been issued by the local enforcing agency having jurisdiction, in
16 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
17 prior to **【January】** July 1, 【2015】 2016;

18 (5) Individual buildings within a nonresidential phased
19 development that received either preliminary or final approval prior
20 to **【July】** January 1, 【2013】 2015 including, but not limited to, the
21 time period commencing on July 1, 2013 through the effective date
22 of P.L. , c. (pending before the Legislature as this bill),
23 provided that a permit for the construction of the building has been
24 issued prior to **【January】** July 1, 【2015】 2016.

25 b. A developer may challenge non-residential development fees
26 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
27 filing a challenge with the Director of the Division of Taxation.
28 Pending a review and determination by the director, which shall be
29 made within 45 days of receipt of the challenge, collected fees shall
30 be placed in an interest bearing escrow account by the municipality
31 or by the State, as the case may be. Appeals from a determination
32 of the director may be made to the tax court in accordance with the
33 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
34 seq., within 90 days after the date of such determination. Interest
35 earned on amounts escrowed shall be credited to the prevailing
36 party.

37 c. Whenever non-residential development is situated on real
38 property that has been previously developed with a building,
39 structure, or other improvement, the non-residential development
40 fee shall be equal to two and a half (2.5) percent of the equalized
41 assessed value of the land and improvements on the property where
42 the non-residential development is situated at the time the final
43 certificate of occupancy is issued, less the equalized assessed value
44 of the land and improvements on the property where the non-
45 residential development is situated, as determined by the tax
46 assessor of the municipality at the time the developer or owner,
47 including any previous owners, first sought approval for a
48 construction permit, including, but not limited to, demolition

1 permits, pursuant to the State Uniform Construction Code, or
2 approval under the "Municipal Land Use Law," P.L.1975, c.291
3 (C.40:55D-1 et seq.). If the calculation required under this section
4 results in a negative number, the non-residential development fee
5 shall be zero.

6 Whenever the developer of a non-residential development has
7 made or committed itself to make a financial or other contribution
8 relating to the provision of housing affordable to low and moderate
9 income households prior to the enactment of P.L.2008, c.46
10 (C.52:27D-329.1 et al.), the non-residential development fee shall
11 be reduced by the amount of the financial contribution and the fair
12 market value of any other contribution made by or committed to be
13 made by the developer. For purposes of this section, a developer is
14 considered to have made or committed itself to make a financial or
15 other contribution, if and only if: (1) the contribution has been
16 transferred, including but not limited to when the funds have
17 already been received by the municipality; (2) the developer has
18 obligated itself to make a contribution as set forth in a written
19 agreement with the municipality, such as a developer's agreement;
20 or (3) the developer's obligation to make a contribution is set forth
21 as a condition in a land use approval issued by a municipal land use
22 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
23 (C.40:55D-1 et seq.).

24 d. Unless otherwise provided for by law, no municipality shall
25 be required to return a financial or any other contribution made by
26 or committed to be made by the developer of a non-residential
27 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
28 329.1 et al.) relating to the provision of housing affordable to low
29 and moderate income households, provided that the developer does
30 not obtain an amended, modified, or new municipal land use
31 approval with a substantial change in the non-residential
32 development. If the developer obtains an amended, modified, or
33 new land use approval for non-residential development, the
34 municipality, person, or entity shall be required to return to the
35 developer any funds or other contribution provided by the developer
36 for the provision of housing affordable to low and moderate income
37 households and the developer shall not be entitled to a reduction in
38 the affordable housing development fee based upon that
39 contribution.

40 e. The provisions of sections 32 through 38 of P.L.2008, c.46
41 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
42 manner as affecting the method or timing of assessing real property
43 for property taxation purposes. The payment of a non-residential
44 development fee shall not increase the equalized assessed value of
45 any property.

46 (cf: P.L.2011, c.122, s.1)

1 2. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to
2 read as follows:

3 39. The provisions of this section shall apply only to those
4 developments for which a fee was imposed pursuant to sections 32
5 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
6 known as the "Statewide Non-residential Development Fee Act."

7 a. A developer of a property that received preliminary site plan
8 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
9 or final approval, pursuant to section 38 of P.L.1975, c.291
10 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
11 payment of a nonresidential development fee prior to the enactment
12 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
13 return of any moneys paid that represent the difference between
14 moneys committed prior to July 17, 2008 and monies paid on or
15 after that date.

16 b. A developer of a non-residential project that, prior to July
17 17, 2008, has been referred to a planning board by the State, a
18 governing body, or other public agency for review pursuant to
19 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
20 to the payment of a nonresidential development fee prior to the
21 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
22 entitled to a return of any moneys paid that represent the difference
23 between moneys committed prior to July 17, 2008 and moneys paid
24 on or after that date.

25 c. If moneys are required to be returned under subsection a., b.
26 or d. of this section, a claim shall be submitted, in writing, to the
27 same entity to which the moneys were paid, within 120 days of the
28 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
29 to whom the funds were paid shall promptly review all requests for
30 returns, and the fees paid shall be returned to the claimant within 30
31 days of receipt of the claim for return.

32 d. A developer of a non-residential project that paid a fee
33 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
34 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
35 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
36 al.), shall be entitled to the return of those moneys paid, provided
37 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
38 as amended by P.L.2009, c.90 do not permit the imposition of a fee
39 upon the developer of that non-residential property.

40 e. Notwithstanding the provisions of subsections a., b., c., and
41 d. of this section, if, on the effective date of P.L.2009, c.90
42 (C.52:27D-489a et al.), a municipality that has returned all or a
43 portion of non-residential fees in accordance with subsection a. or
44 b. of this section shall be reimbursed from the funds available
45 through the appropriation made into the "New Jersey Affordable
46 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
47 (C.52:27D-320.1) within 30 days of the municipality providing
48 written notice to the Council on Affordable Housing.

1 f. A developer of a non-residential project that paid a fee
2 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
3 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
4 but prior to the effective date of P.L.2011, c.122, shall be entitled to
5 the return of those monies paid, provided that said monies have not
6 already been expended by the municipality on affordable housing
7 projects, and provided that the provisions of section 37 of P.L.2008,
8 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit
9 the imposition of a fee upon the developer of that non-residential
10 property. If moneys are eligible to be returned under this
11 subsection, a claim shall be submitted, in writing, to the same entity
12 to which the moneys were paid, within 120 days of the effective
13 date of P.L.2011, c.122. The entity to whom the funds were paid
14 shall promptly review all requests for returns, to ensure
15 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the
16 fees paid shall be returned to the claimant within 30 days of receipt
17 of the claim for return.

18 g. A developer of a non-residential project that paid a fee
19 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
20 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2013
21 but prior to the effective date of P.L. , c. (pending before the
22 Legislature as this bill) shall be entitled to the return of those
23 monies paid, provided that said monies have not already been
24 expended by the municipality on affordable housing projects, and
25 provided that the provisions of section 37 of P.L.2008, c.46
26 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
27 Legislature as this bill) do not permit the imposition of a fee upon
28 the developer of that non-residential property. If moneys are
29 eligible to be returned under this subsection, a claim shall be
30 submitted, in writing, to the same entity to which the moneys were
31 paid, within 120 days of the effective date of P.L. , c. (pending
32 before the Legislature as this bill). The entity to whom the funds
33 were paid shall promptly review all requests for returns, to ensure
34 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as
35 amended by P.L. , c. (pending before the Legislature as this
36 bill), and the fees paid shall be returned to the claimant within 30
37 days of receipt of the claim for return.
38 (cf: P.L.2011, c.122, s.2)

39

40 3. (New section) the Council on Affordable Housing
41 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
42 301 et al.) is abolished, and all of its powers, functions, and duties
43 that are not repealed herein are continued in the Department of
44 Community Affairs established pursuant to section 1 of P.L.1966,
45 c.293 (C.52:27D-1), except as herein otherwise provided.
46 Whenever, in any law, rule regulation, order, contract, document,
47 judicial or administrative proceeding, or otherwise, reference is
48 made to the Council on Affordable Housing, the same shall mean

1 and refer to the Department of Community Affairs. All
2 appropriations and other moneys available, and to become
3 available, to the Council on Affordable Housing are hereby
4 continued in the Department of Community Affairs, and shall be
5 available for the objects and purposes for which such moneys are
6 appropriated, subject to any terms, restriction, limitations, or other
7 requirements imposed by State or federal law.

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

10
11 4. Section 47 of P.L.1975, C.291 (c.40:55D-60) is amended to
12 read as follows:

13 47. Whenever the proposed development requires approval
14 pursuant to this act of a subdivision, site plan or conditional use, but
15 not a variance pursuant to subsection d. of section 57 of **[this act]**
16 P.L.1975, c.291 (C. 40:55D-70), the planning board shall have the
17 power to grant to the same extent and subject to the same
18 restrictions as the board of adjustment:

19 a. Variances pursuant to subsection 57 c. **[of this act]**
20 P.L.1975, C.291 (c.40:55D-70);

21 b. Direction pursuant to section 25 of **[this act]** P.L.1975,
22 c.291 (C.40:55D-34) for issuance of a permit for a building or
23 structure in the bed of a mapped street or public drainage way,
24 flood control basin or public area reserved pursuant to section 23
25 **[of this act; and]** P.L.1975, c.291 (C.40:55D-32); [and]

26 c. Direction pursuant to section 27 of **[this act]** P.L.1975,
27 c.291 (C.40:55D-36) for issuance of a permit for a building or
28 structure not related to a street; and

29 d. Variances pursuant to subsection d. of section 57 of P.L.1975,
30 c.291 (C.40:55D-70), requested pursuant to section 23 of P.L. _____,
31 c. (C. _____) (pending before the Legislature as this bill) for a
32 proposed development in which at least 10 percent of the units are
33 reserved for low- and moderate-income households, in a
34 municipality that has not been determined to be inclusionary.

35 Whenever relief is requested pursuant to this section, notice of
36 the hearing on the application for development shall include
37 reference to the request for a variance or direction for issuance of a
38 permit, as the case may be.

39 The developer may elect to submit a separate application
40 requesting approval of the variance or direction of the issuance of a
41 permit and a subsequent application for any required approval of a
42 subdivision, site plan or conditional use. The separate approval of
43 the variance or direction of the issuance of a permit shall be
44 conditioned upon grant of all required subsequent approvals by the
45 planning board. No such subsequent approval shall be granted
46 unless the approval can be granted without substantial detriment to
47 the public good and without substantial impairment of the intent

1 and purpose of the zone plan and zoning ordinance.
2 (cf: P.L.1984, c. 20, s. 10)

3
4 5. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
5 read as follows:

6 57. Powers. The board of adjustment shall have the power to:

7 a. Hear and decide appeals where it is alleged by the appellant
8 that there is error in any order, requirement, decision or refusal
9 made by an administrative officer based on or made in the
10 enforcement of the zoning ordinance;

11 b. Hear and decide requests for interpretation of the zoning
12 map or ordinance or for decisions upon other special questions upon
13 which such board is authorized to pass by any zoning or official
14 map ordinance, in accordance with this act;

15 c. (1) Where: (a) by reason of exceptional narrowness,
16 shallowness or shape of a specific piece of property, or (b) by
17 reason of exceptional topographic conditions or physical features
18 uniquely affecting a specific piece of property, or (c) by reason of
19 an extraordinary and exceptional situation uniquely affecting a
20 specific piece of property or the structures lawfully existing
21 thereon, the strict application of any regulation pursuant to article 8
22 of **[this act]** P.L.1975, c.291 would result in peculiar and
23 exceptional practical difficulties to, or exceptional and undue
24 hardship upon, the developer of such property, grant, upon an
25 application or an appeal relating to such property, a variance from
26 such strict application of such regulation so as to relieve such
27 difficulties or hardship; (2) where in an application or appeal
28 relating to a specific piece of property the purposes of this act or the
29 purposes of the "Educational Facilities Construction and Financing
30 Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a
31 deviation from the zoning ordinance requirements and the benefits
32 of the deviation would substantially outweigh any detriment, grant a
33 variance to allow departure from regulations pursuant to article 8 of
34 **[this act]** P.L.1975, c.291; provided, however, that the fact that a
35 proposed use is an inherently beneficial use shall not be dispositive
36 of a decision on a variance under this subsection and provided that
37 no variance from those departures enumerated in subsection d. of
38 this section shall be granted under this subsection; and provided
39 further that the proposed development does not require approval by
40 the planning board of a subdivision, site plan or conditional use, in
41 conjunction with which the planning board has power to review a
42 request for a variance pursuant to subsection a. of section 47 of
43 **[this act]** P.L.1975, c.291; and

44 d. In particular cases for special reasons, grant a variance to
45 allow departure from regulations pursuant to article 8 of **[this act]**
46 P.L.1975, c.291 to permit:

47 (1) a use or principal structure in a district restricted against such
48 use or principal structure**[.]** ;

1 (2) an expansion of a nonconforming use~~],]~~ ;

2 (3) deviation from a specification or standard pursuant to section
3 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a
4 conditional use~~],]~~ ;

5 (4) an increase in the permitted floor area ratio as defined in
6 section 3.1 of P.L.1975, c.291 (C.40:55D-4)~~],]~~ ;

7 (5) an increase in the permitted density as defined in section 3.1
8 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required
9 lot area for a lot or lots for detached one or two dwelling unit
10 buildings, which lot or lots are either an isolated undersized lot or
11 lots resulting from a minor subdivision; or

12 (6) a height of a principal structure which exceeds by 10 feet or
13 10% the maximum height permitted in the district for a principal
14 structure. A variance under this subsection shall be granted only by
15 affirmative vote of at least five members, in the case of a municipal
16 board, or two-thirds of the full authorized membership, in the case
17 of a regional board, pursuant to article 10 of ~~["this act"]~~ P.L.1975
18 c.291.

19 If an application development requests one or more variances but
20 not a variance for a purpose enumerated in subsection d. of this
21 section, the decision on the requested variance or variances shall be
22 rendered under subsection c. of this section.

23 No variance or other relief may be granted under the terms of
24 this section, including a variance or other relief involving an
25 inherently beneficial use, without a showing that such variance or
26 other relief can be granted without substantial detriment to the
27 public good and will not substantially impair the intent and the
28 purpose of the zone plan and zoning ordinance.

29 In a municipality that has been deemed inclusionary pursuant to
30 section 19 of P.L. _____, c. _____ (C. _____) (pending before the
31 Legislature as this bill), the board shall not be required to review
32 variances requested pursuant to this subsection for the development
33 of affordable housing under inherently beneficial use standards, and
34 a denial of a variance under such circumstances shall be
35 presumptively valid.

36 e. In respect to any airport safety zones delineated under the
37 "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
38 seq.), no variance or other relief may be granted under the terms of
39 this section, permitting the creation or establishment of a
40 nonconforming use which would be prohibited under standards
41 promulgated pursuant to that act, except upon issuance of a permit
42 by the Commissioner of Transportation. An application under this
43 section may be referred to any appropriate person or agency for its
44 report; provided that such reference shall not extend the period of
45 time within which the zoning board of adjustment shall act.

46 f. Upon application, hear and determine which, where, and to
47 what extent an alternative method described in section 22 of
48 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this

1 bill) of satisfying the set-aside requirements of section 21 of
2 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
3 bill) may be employed.

4 (cf: P.L.2007, c.137, s.60)

5
6 6. Section 9 of P.L.1966, c.293 (C.52:27D-9) is amended to
7 read as follows:

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

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

12 (b) Advise and inform the Governor on the affairs and problems
13 of local government and make recommendations to the Governor
14 for proposed legislation pertaining thereto;

15 (c) Encourage cooperative action by local governments,
16 including joint service agreements, regional compacts and other
17 forms of regional cooperation;

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

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

21 (f) Collect, collate, publish and disseminate information
22 necessary for the effective operation of the department and useful to
23 local government;

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

27 (h) Stimulate local programs through publicity, education,
28 guidance and technical assistance concerning Federal and State
29 programs;

30 (i) Convene meetings of municipal, county or other local
31 officials to discuss ways of cooperating to provide service more
32 efficiently and economically;

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

38 (k) Post on the department's website the annual budget and three
39 immediately preceding adopted budgets of any municipality or
40 county that does not maintain its own website pursuant to the
41 requirements of N.J.S.40A:4-10; and

42 (l) Assume the duties of the Council on Affordable Housing
43 that are not repealed by P.L. _____, c. _____ (pending before the
44 Legislature as this bill) and are transferred to the department
45 pursuant to section 3 of P.L. _____, c. _____ (C. _____) and section 17 of
46 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
47 bill).

48 (cf: P.L.2011, c.7, s.2)

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

3 4. As used in this act:

4 a. "Council" means the Council on Affordable Housing
5 established **in this act** by section 5 of P.L.1985, c.222 (C.52:27D-
6 305), **which shall have primary jurisdiction for the administration**
7 **of housing obligations in accordance with sound regional planning**
8 **considerations in this State** and, pursuant to section 3 of P.L. _____,
9 c. _____ (C. _____) (pending before the Legislature as this bill) and
10 subsequent to the effective date of section P.L. _____, c. _____
11 (pending before the Legislature as this bill), the Department of
12 Community Affairs.

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

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

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

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

40 f. "Inclusionary development" means a market rate residential
41 housing development **in which a substantial percentage of the**
42 **housing units are provided for a reasonable income range of** that
43 includes units set-aside as housing affordable to low and moderate
44 income households.

45 g. **["Conversion" means the conversion of existing**
46 **commercial, industrial, or residential structures for low and**
47 **moderate income housing purposes where a substantial percentage**

- 1 of the housing units are provided for a reasonable income range of
2 low and moderate income households.】 (Deleted by amendment,
3 P.L. _____, c. _____) (pending before the Legislature as this bill)
- 4 h. "Development" means any development for which
5 permission may be required pursuant to the "Municipal Land Use
6 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 7 i. "Agency" means the New Jersey Housing and Mortgage
8 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
9 seq.).
- 10 j. **【**"Prospective need" means a projection of housing needs
11 based on development and growth which is reasonably likely to
12 occur in a region or a municipality, as the case may be, as a result
13 of actual determination of public and private entities. In
14 determining prospective need, consideration shall be given to
15 approvals of development applications, real property transfers and
16 economic projections prepared by the State Planning Commission
17 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
18 196 et seq.).**】** (Deleted by amendment, P.L. _____, c. _____) (pending
19 before the Legislature as this bill)
- 20 k. "Disabled person" means a person with a physical disability,
21 infirmity, malformation or disfigurement which is caused by bodily
22 injury, birth defect, aging or illness including epilepsy and other
23 seizure disorders, and which shall include, but not be limited to, any
24 degree of paralysis, amputation, lack of physical coordination,
25 blindness or visual impediment, deafness or hearing impediment,
26 muteness or speech impediment or physical reliance on a service or
27 guide dog, wheelchair, or other remedial appliance or device.
- 28 l. "Adaptable" means constructed in compliance with the
29 technical design standards of the barrier free subcode adopted by
30 the Commissioner of Community Affairs pursuant to the "State
31 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
32 et seq.) and in accordance with the provisions of section 5 of
33 P.L.2005, c.350 (C.52:27D-123.15).
- 34 m. "Very low income housing" means housing affordable
35 according to federal Department of Housing and Urban
36 Development or other recognized standards for home ownership
37 and rental costs and occupied or reserved for occupancy by
38 households with a gross household income equal to 30% or less of
39 the median gross household income for households of the same size
40 within the housing region in which the housing is located.
- 41 n. "Price restricted unit" means a residential dwelling unit that is
42 price restricted, including: units that are deed restricted for
43 occupancy by residents of low or moderate income; price restricted
44 pursuant to covenants established for units financed by federal Low
45 Income Housing Tax Credits; price restricted pursuant to covenants
46 established for units developed pursuant to the "Neighborhood
47 Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-
48 490 et seq.); units rehabilitated as either a sending or receiving

1 municipality under a regional contribution agreement, and subject
2 to price controls; units built or rehabilitated as part of a Community
3 Development Block Grant, and subject to price controls; housing
4 units operated by a Public Housing Authority; units constructed,
5 rehabilitated, or receiving project-based assistance under the
6 program authorized pursuant to section 8 of the United States
7 Housing Act of 1937.

8 o. "Developable land" means undeveloped property having
9 reasonable access to sewer service, having a slope of less than 15
10 percent, that is not property owned by a municipality or county and
11 designated by resolution or ordinance as open space, and located
12 where development is not prohibited pursuant to the "Freshwater
13 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the
14 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
15 the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1
16 et seq.), the "Highlands Water Protection and Planning Act,"
17 P.L.2004, c.120, (C.13:20-1 et al.), or the Federal Clean Water Act,
18 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands
19 Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et
20 seq.).

21 p. "Special needs housing" means housing, or the residential
22 portion of a development that is permanent supportive housing, as
23 defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a
24 community residence that is primarily for occupancy by individuals
25 with special needs who shall occupy such housing as their usual and
26 permanent residence.

27 q. "Special needs unit" means a single unit of special needs
28 housing for one or more occupants that contains, at a minimum, a
29 bedroom and a bathroom.

30 r. "Inclusionary municipality" means a municipality deemed,
31 pursuant to section 19 of P.L. _____, c. _____ (C. _____) (pending before
32 the Legislature as this bill), to have provided a variety and choice of
33 housing as evidenced by the quantity of price-restricted units or
34 amount of other units, the characteristics of which demonstrate an
35 opportunity for low-income or moderate-income housing.

36 s. "Workforce housing" means housing affordable to,
37 according to federal Department of Housing and Urban
38 Development or other recognized standards for home ownership
39 and rental costs, and occupied by, or reserved for occupancy by,
40 households with a gross household income equal to or less than 120
41 of the median gross household income for households of the same
42 size within the housing region in which the housing is located.

43 t. "Residential development project" means new construction
44 resulting in the production of five or more residential dwelling
45 units, whether attached or detached.

46 u. "Small residential development project" means new
47 construction resulting in the production of fewer than five
48 residential dwelling units, whether attached or detached, and shall

1 not mean any construction or reconstruction of a single-family
2 dwelling that is occupied by, or intended to be occupied by, the
3 owner.

4 (cf: P.L.2008, c.46, s.5)

5
6 8. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended
7 to read as follows:

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

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

14 "Commissioner" means the Commissioner of Community
15 Affairs.

16 "Council" means the Council on Affordable Housing created by
17 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,
18 pursuant to section 3 of P.L. , c. (C.) (pending before
19 the Legislature as this bill) and subsequent to the effective date of
20 P.L. , c. (C.) (pending before the Legislature as this
21 bill), the Department of Community Affairs.

22 "Department" means the Department of Community Affairs.

23 "Housing region" means a housing region as determined by the
24 **【Council on Affordable Housing】** Department of Community
25 Affairs pursuant to section 【7 of P.L.1985, c.222 (C.52:27D-307)】
26 17 of P.L. , c. (C.) (pending before the Legislature
27 as this bill).

28 "Project" or "housing project" means any specific work or
29 undertaking for the purpose of providing housing accommodations,
30 whether by new construction or by rehabilitation or adaptation of
31 existing structures, that shall be affordable to persons and families
32 of low or moderate income within the meaning of the "Fair Housing
33 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or
34 undertaking may include the acquisition, construction or
35 rehabilitation of lands, buildings and improvements, and such
36 stores, offices, and social, recreational, communal or other facilities
37 as may be incidental or appurtenant to the housing accommodations
38 that are to be provided.

39 "Register" means the Register of Housing Projects directed by
40 section 2 of **【this act】** P.L.1991, c.479 (C.52:27D-307.2) to be
41 established and maintained by the commissioner.

42 (cf: P.L.1991, c.479, s.1)

43
44 9. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended
45 to read as follows:

46 3. a. The commissioner shall cause to be developed a system
47 for assigning and designating priority ratings to each project
48 included in the register. Priority ratings shall be based upon the

1 following factors, giving to each factor such weight as the
2 commissioner shall judge to be appropriate:

3 (1) Feasibility. Each project shall be evaluated for its physical
4 and financial feasibility, giving consideration to the capabilities of
5 the proposed sponsor or developer, market conditions and
6 regulatory requirements in the locality for which it is proposed, and
7 the availability of financing in sufficient amount and at reasonable
8 cost.

9 (2) Desirability. Each project shall be evaluated with relation to
10 its probable effect in meeting the affordable housing needs of the
11 housing region in which it is to be located, in accordance with the
12 standards and criteria of the **【council】** Department of Community
13 Affairs. Consideration shall be given to (a) the number of
14 affordable dwelling units that the project would provide, (b) the
15 proportion of affordable units to the total number of units envisaged
16 in the project plan, (c) the distribution of those affordable units as
17 between those affordable to persons and families of low income and
18 those of moderate income, considered in relation to the needs of the
19 housing region, (d) appropriateness of the proposed tenure of the
20 affordable units, whether to be rental or owner-occupied, in relation
21 to the needs of the housing region, and (e) appropriateness of the
22 proposed distribution of units as to family size, in relation to the
23 needs of the housing region.

24 (3) Efficiency. Each project shall be evaluated on the basis of
25 the cost to the State, in terms of financial assistance granted or
26 revenue forgone in order to further the project, for each affordable
27 dwelling unit judged by the commissioner to be feasible and
28 desirable according to the terms of the proposal or application made
29 for such assistance.

30 b. In developing the system of assigning and designating
31 priorities, and in evaluating individual projects for such assignment
32 and designation in the register, the commissioner shall consult with
33 the executive director of the agency and the **【executive director of**
34 **the council】** Commissioner of Community Affairs. The **【council】**
35 person having control over the project and the agency shall
36 promptly and fully supply the commissioner with all relevant
37 information necessary for the commissioner's timely and complete
38 fulfillment of the requirements of this act.

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

40

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

43 4. a. Any officer or employee of the department, including any
44 member, officer or employee of the agency **【or the council】**, who
45 receives from any person any solicitation, application, proposal or
46 communication of any kind, whether oral or in writing, aimed at
47 furthering the assistance of any project shall promptly report the
48 same to the commissioner. The report shall identify the person or

1 persons making such communication. If any such person is not
2 identified in the register in accordance with the requirements of
3 subsection b. of section 2 of this act, the report shall state the
4 person's relationship to the sponsor or developer of the project and
5 the capacity in which the person represents himself or herself to be
6 acting on behalf of the sponsor or developer; or if the person fails or
7 refuses to supply that information, the report shall so state.

8 b. The commissioner shall develop a procedure or procedures
9 by which reports required under subsection a. of this section shall
10 be made either to the commissioner directly or through such
11 administrative channels as the commissioner shall devise and direct.
12 Notwithstanding the provisions of subsection i. of section 4 of
13 P.L.1983, c.530 (C.55:14K-4) **and subsection a. of section 5 of**
14 **P.L.1985, c.222 (C.52:27D-305)],** the regulations adopted by the
15 commissioner in fulfillment of this subsection shall be of full force
16 and application on and within the agency **and the council];** and all
17 members, officers and employees of the agency **and council]** shall
18 give full compliance with and obedience to the rules and orders of
19 the commissioner made in pursuance of his duties and
20 responsibilities under this act.

21 c. Reports made to the commissioner shall be promptly
22 forwarded by him, not later than 10 days after their receipt, to the
23 Governor and to the presiding officers of the Houses of the
24 Legislature, who shall cause all members of their respective Houses
25 to be notified of the receipt of those reports and shall make
26 adequate provision for the inspection of the commissioner's reports
27 by members and committees of either House, and for the
28 dissemination of those reports to the public. The reports forwarded
29 by the commissioner shall in each instance indicate the priority
30 rating that has been assigned in the register to the project to which
31 the report relates.

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

33
34 11. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
35 read as follows:

36 11. a. **In** adopting its housing element, the municipality may
37 provide for its fair share of low and moderate income housing by
38 means of any technique or combination of techniques which provide
39 a realistic opportunity for the provision of the fair share. The
40 housing element shall contain an analysis demonstrating that it will
41 provide such a realistic opportunity, and the municipality shall
42 establish that its land use and other relevant ordinances have been
43 revised to incorporate the provisions for low and moderate income
44 housing. In preparing the housing element, the municipality shall
45 consider the following techniques for providing low and moderate
46 income housing within the municipality, as well as such other

1 techniques as may be published by the council or proposed by the
2 municipality:

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

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

11 (3) Determination of measures that the municipality will take to
12 assure that low and moderate income units remain affordable to low
13 and moderate income households for an appropriate period of not
14 less than six years;

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

18 (5) Donation or use of municipally owned land or land
19 condemned by the municipality for purposes of providing low and
20 moderate income housing;

21 (6) Tax abatements for purposes of providing low and moderate
22 income housing;

23 (7) Utilization of funds obtained from any State or federal
24 subsidy toward the construction of low and moderate income
25 housing;

26 (8) Utilization of municipally generated funds toward the
27 construction of low and moderate income housing; and

28 (9) The purchase of privately owned real property used for
29 residential purposes at the value of all liens secured by the property,
30 excluding any tax liens, notwithstanding that the total amount of
31 debt secured by liens exceeds the appraised value of the property,
32 pursuant to regulations promulgated by the Commissioner of
33 Community Affairs pursuant to subsection b. of section 41 of
34 P.L.2000, c.126 (C.52:27D-311.2).**】** (Deleted by amendment,
35 P.L. _____, c. _____) (pending before the Legislature as this bill)

36 b. **【**The municipality may provide for a phasing schedule for
37 the achievement of its fair share of low and moderate income
38 housing.**】** (Deleted by amendment, P.L. _____, c. _____) (pending
39 before the Legislature as this bill)

40 c. (Deleted by amendment, P.L.2008, c.46)

41 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in
42 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
43 bill) shall require a municipality to raise or expend municipal
44 revenues in order to provide low and moderate income housing.

45 e. **【**When a municipality's housing element includes the
46 provision of rental housing units in a community residence for the
47 developmentally disabled, as defined in section 2 of P.L.1977,
48 c.448 (C.30:11B-2), which will be affordable to persons of low and

1 moderate income, and for which adequate measures to retain such
2 affordability pursuant to paragraph (3) of subsection a. of this
3 section are included in the housing element, those housing units
4 shall be fully credited as permitted under the rules of the council
5 towards the fulfillment of the municipality's fair share of low and
6 moderate income housing.】 (Deleted by amendment, P.L. _____,
7 c. _____) (pending before the Legislature as this bill)

8 f. 【It having been determined by the Legislature that the
9 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
10 a public purpose, a municipality or municipalities may utilize public
11 monies to make donations, grants or loans of public funds for the
12 rehabilitation of deficient housing units and the provision of new or
13 substantially rehabilitated housing for low and moderate income
14 persons, providing that any private advantage is incidental.】
15 (Deleted by amendment, P.L. _____, c. _____) (pending before the
16 Legislature as this bill)

17 g. 【A municipality which has received substantive certification
18 from the council, and which has actually effected the construction
19 of the affordable housing units it is obligated to provide, may
20 amend its affordable housing element or zoning ordinances without
21 the approval of the council.】 (Deleted by amendment, P.L. _____,
22 c. _____) (pending before the Legislature as this bill)

23 h. 【Whenever affordable housing units are proposed to be
24 provided through an inclusionary development, a municipality shall
25 provide, through its zoning powers, incentives to the developer,
26 which shall include increased densities and reduced costs, in
27 accordance with the regulations of the council and this subsection.】
28 (Deleted by amendment, P.L. _____, c. _____) (pending before the
29 Legislature as this bill)

30 i. 【The council, upon the application of a municipality and a
31 developer, may approve reduced affordable housing set-asides or
32 increased densities to ensure the economic feasibility of an
33 inclusionary development.】 (Deleted by amendment, P.L. _____,
34 c. _____) (pending before the Legislature as this bill)

35 j. A municipality may enter into an agreement with a
36 developer or residential development owner to provide a preference
37 for affordable housing to low to moderate income veterans who
38 served in time of war or other emergency, as defined in section 1 of
39 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable
40 units in that particular project. This preference shall be established
41 in the applicant selection process for available affordable units so
42 that applicants who are veterans who served in time of war or other
43 emergency, as referenced in this subsection, and who apply within
44 90 days of the initial marketing period shall receive preference for
45 the rental of the agreed-upon percentage of affordable units. After
46 the first 90 days of the initial 120-day marketing period, if any of
47 those units subject to the preference remain available, then

1 applicants from the general public shall be considered for
2 occupancy. Following the initial 120-day marketing period,
3 previously qualified applicants and future qualified applicants who
4 are veterans who served in time of war or other emergency, as
5 referenced in this subsection, shall be placed on a special waiting
6 list as well as the general waiting list. The veterans on the special
7 waiting list shall be given preference for affordable units, as the
8 units become available, whenever the percentage of preference-
9 occupied units falls below the agreed upon percentage. Any
10 agreement to provide affordable housing preferences for veterans
11 pursuant to this subsection shall not affect a municipality's ability to
12 receive credit for the unit from the council, or its successor.

13 (cf: P.L.2013, c.6, s.1)

14
15 12. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to
16 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 considered a price restricted
19 unit for purposes of a determination pursuant to subsection a. of
20 section 19 of P.L. , c. (C.) (pending before the
21 Legislature as this bill), any new construction **【for which credit is**
22 **sought against a fair share obligation】** shall be adaptable in
23 accordance with the provisions of section 5 of P.L.2005, c.350
24 (C.52:27D-123.15). For the purposes of P.L.2005, c.350
25 (C.52:27D-311a et al.), "new construction" shall mean an entirely
26 new improvement not previously occupied or used for any purpose.
27 (cf: P.L.2005, c.350, s.1)

28
29 13. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to
30 read as follows:

31 6. The **【council】** department may take such measures as are
32 necessary to assure compliance with the adaptability requirements
33 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
34 including the inspection of those units which are newly constructed
35 and receive housing credit as provided under section 1 of P.L.2005,
36 c.350 (C.52:27D-311a et al.) and section 21 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) for adaptability, as part
38 of the monitoring which occurs pursuant to P.L.1985, c.222
39 (C.52:27D-301 et al.). **【If any units for which credit was granted in**
40 **accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a**
41 **et al.) are found not to conform to the requirements of P.L.2005,**
42 **c.350 (C.52:27D-311a et al.), the council may require the**
43 **municipality to amend its fair share plan within 90 days of**
44 **receiving notice from the council, to address its fair share obligation**
45 **pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that**
46 **the municipality fails to amend its fair share plan within 90 days of**

1 receiving such notice, the council may revoke substantive
2 certification.】

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

4
5 14. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
6 read as follows:

7 20. There is established in the Department of Community
8 Affairs a separate trust fund, to be used for the exclusive purposes
9 as provided in this section, and which shall be known as the "New
10 Jersey Affordable Housing Trust Fund." The fund shall be a non-
11 lapsing, revolving trust fund, and all monies deposited or received
12 for purposes of the fund shall be accounted for separately, by source
13 and amount, and remain in the fund until appropriated for such
14 purposes. The fund shall be the repository of all State funds
15 appropriated for affordable housing purposes, including, but not
16 limited to, the proceeds from the receipts of the additional fee
17 collected pursuant to paragraph (2) of subsection a. of section 3 of
18 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
19 Statewide non-residential development fees collected pursuant to
20 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
21 reverting from municipal development trust funds, or other monies
22 as may be dedicated, earmarked, or appropriated by the Legislature
23 for the purposes of the fund. All references in any law, order, rule,
24 regulation, contract, loan, document, or otherwise, to the
25 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
26 mean the "New Jersey Affordable Housing Trust Fund." Not less
27 than 13 percent of the total expenditures in any State fiscal year
28 from the New Jersey Affordable Housing Trust Fund shall be used
29 for housing projects and programs reserved for very low income
30 households. The department shall be permitted to utilize annually
31 up to 7.5 percent of the monies available in the fund for the
32 payment of any necessary administrative costs related to the
33 administration of the "Fair Housing Act," P.L.1985, c.222
34 (C.52:27D-301 et al.), or any costs related to administration of
35 P.L.2008, c.46 (C.52:27D-329.1 et al.) or P.L. , c. (C.)
36 (pending before the Legislature as this bill).

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

1 **【Of those monies deposited into the "New Jersey Affordable**
2 **Housing Trust Fund" that are derived from municipal development**
3 **fee trust funds, or from available collections of Statewide non-**
4 **residential development fees, a priority for funding shall be**
5 **established for projects in municipalities that have petitioned the**
6 **council for substantive certification.】** The commissioner shall
7 prioritize funding for projects that include special needs units when
8 making grants and awards from the "New Jersey Affordable
9 Housing Trust Fund."

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

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

18 c. For any period which the council may approve, the
19 commissioner may assist affordable housing programs which are
20 not located in municipalities whose housing elements have been
21 granted substantive certification or which are not in furtherance of a
22 regional contribution agreement; provided that the affordable
23 housing program will meet all or part of a municipal low and
24 moderate income housing obligation.

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

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

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

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

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

40 (5) Grants of assistance to eligible municipalities for costs of
41 necessary studies, surveys, plans and permits; engineering,
42 architectural and other technical services; costs of land acquisition
43 and any buildings thereon; and costs of site preparation, demolition
44 and infrastructure development for projects undertaken pursuant to
45 an approved regional contribution agreement;

46 (6) Assistance to a local housing authority, nonprofit or limited
47 dividend housing corporation or association or a qualified entity
48 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for

1 rehabilitation or restoration of housing units which it administers
2 which: (a) are unusable or in a serious state of disrepair; (b) can be
3 restored in an economically feasible and sound manner; and (c) can
4 be retained in a safe, decent and sanitary manner, upon completion
5 of rehabilitation or restoration; and

6 (7) Other housing programs for low and moderate income
7 housing, including, without limitation, (a) infrastructure projects
8 directly facilitating the construction of low and moderate income
9 housing not to exceed a reasonable percentage of the construction
10 costs of the low and moderate income housing to be provided and
11 (b) alteration of dwelling units occupied or to be occupied by
12 households of low or moderate income and the common areas of the
13 premises in which they are located in order to make them accessible
14 to handicapped persons.

15 e. Any grant or loan agreement entered into pursuant to this
16 section shall incorporate contractual guarantees and procedures by
17 which the division will ensure that any unit of housing provided for
18 low and moderate income households shall continue to be occupied
19 by low and moderate income households for at least 20 years
20 following the award of the loan or grant, except that the division
21 may approve a guarantee for a period of less than 20 years where
22 necessary to ensure project feasibility.

23 f. Notwithstanding the provisions of any other law, rule or
24 regulation to the contrary, in making grants or loans under this
25 section, the department shall not require that tenants be certified as
26 low or moderate income or that contractual guarantees or deed
27 restrictions be in place to ensure continued low and moderate
28 income occupancy as a condition of providing housing assistance
29 from any program administered by the department, when that
30 assistance is provided for a project of moderate rehabilitation if the
31 project (1) contains 30 or fewer rental units and (2) is located in a
32 census tract in which the median household income is 60 percent or
33 less of the median income for the housing region in which the
34 census tract is located, as determined for a three person household
35 by the council in accordance with the latest federal decennial
36 census. A list of eligible census tracts shall be maintained by the
37 department and shall be adjusted upon publication of median
38 income figures by census tract after each federal decennial census.

39 g. In addition to other grants or loans awarded pursuant to this
40 section, and without regard to any limitations on such grants or
41 loans for any other purposes herein imposed, the commissioner
42 shall annually allocate such amounts as may be necessary in the
43 commissioner's discretion, and in accordance with section 3 of
44 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
45 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
46 287.1 et al.). Such rental assistance grants shall be deemed
47 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
48 301 et al.), in order to meet the housing needs of certain low income

1 households who may not be eligible to occupy other housing
2 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

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

19 i. The commissioner may award or grant the amount of any
20 appropriation deposited in the "New Jersey Affordable Housing
21 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
22 320.1) to municipalities pursuant to the provisions of section 39 of
23 P.L.2009, c.90 (C.40:55D-8.8).
24 (cf: P.L.2013, c.253, s.49)

25
26 15. Section 41 of P.L.2009, c.90 (C.52:27D-320.1) is amended
27 to read as follows:

28 41. a. Notwithstanding any law to the contrary, there is
29 appropriated \$15 million to the "New Jersey Affordable Housing
30 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
31 (C.52:27D-320) **】, to replace the suspended non-residential**
32 **development fee established under the provisions of the "Statewide**
33 **Non-Residential Development Fee Act," sections 32 through 38 of**
34 **P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)】.**

35 b. (1) Municipalities authorized by the provisions of the
36 "Statewide Non-Residential Development Fee Act," sections 32
37 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)
38 to directly receive and use development fees are permitted to
39 petition the commissioner for the award of a grant or loan of any
40 portion of the appropriation described in subsection a. of this
41 section. The commissioner shall award grants or loans from the
42 fund to municipalities that **【incorporated】** approve anticipated or
43 existing housing projects and programs funded by a municipal
44 development trust fund **【in a housing element submitted to the**
45 **council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307)】.**

46 (2) The commissioner shall target the award of any grant or loan
47 to municipalities based on the extent that their housing plan relied

1 on housing projects or programs funded in part or in whole by
2 municipal development trust fund revenues.

3 (cf: P.L.2009, c.90, s.41)

4
5 16. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended
6 to read as follows:

7 18. a. **【**Notwithstanding any rules of the council to the contrary,
8 for developments consisting of newly-constructed residential units
9 located, or to be located, within the jurisdiction of any regional
10 planning entity required to adopt a master plan or comprehensive
11 management plan pursuant to statutory law, including the New
12 Jersey Meadowlands Commission pursuant to subsection (i) of
13 section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission
14 pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,
15 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization
16 Planning Authority pursuant to section 5 of P.L.2006, c.16
17 (C.52:27I-5), or its successor, and the Highlands Water Protection
18 and Planning Council pursuant to section 11 of P.L.2004, c.120
19 (C.13:20-11), but excluding joint planning boards formed pursuant
20 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
21 required to be reserved for occupancy by low or moderate income
22 households at least 20 percent of the residential units constructed, to
23 the extent this is economically feasible.**】** (Deleted by amendment,
24 P.L. _____, c. _____) (pending before the Legislature as this bill)

25 b. Subject to the provisions of subsection d. of this section, a
26 developer of a project consisting of newly-constructed residential
27 units being financed in whole or in part with State funds, including,
28 but not limited to, transit villages designated by the Department of
29 Transportation and units constructed on State-owned property, shall
30 be required to reserve at least **【20】** 10 percent of the residential
31 units constructed for occupancy by low or moderate income
32 households, as those terms are defined in section 4 of P.L.1985,
33 c.222 (C.52:27D-304), with affordability controls as required under
34 the rules of the **【council】** department, unless the municipality in
35 which the property is located has received **【substantive certification**
36 **from the council and such a reservation is not required under the**
37 **approved affordable housing plan, or the municipality has been**
38 **given】** a judgment of repose or a judgment of compliance by the
39 court, and such a reservation is not required under the approved
40 affordable housing plan or the municipality has received substantive
41 certification from the council or has petitioned for substantive
42 certification prior to the effective date of P.L. _____, c. _____ (C. _____)
43 (pending before the Legislature as this bill) and such petition has
44 not been dismissed or otherwise determined to be invalid. A
45 municipality may satisfy the set-aside requirements imposed by this
46 subsection through any combination of the alternate means provided

1 for in section 21 of P.L. _____, c. _____ (C. _____) (pending before the
2 Legislature as this bill).

3 c. **[(1)** The Legislature recognizes that regional planning entities
4 are appropriately positioned to take a broader role in the planning
5 and provision of affordable housing based on regional planning
6 considerations. In recognition of the value of sound regional
7 planning, including the desire to foster economic growth, create a
8 variety and choice of housing near public transportation, protect
9 critical environmental resources, including farmland and open space
10 preservation, and maximize the use of existing infrastructure, there
11 is created a new program to foster regional planning entities.

12 (2) The regional planning entities identified in subsection a. of
13 this section shall identify and coordinate regional affordable
14 housing opportunities in cooperation with municipalities in areas
15 with convenient access to infrastructure, employment opportunities,
16 and public transportation. Coordination of affordable housing
17 opportunities may include methods to regionally provide housing in
18 line with regional concerns, such as transit needs or opportunities,
19 environmental concerns, or such other factors as the council may
20 permit; provided, however, that such provision by such a regional
21 entity may not result in more than a 50 percent change in the fair
22 share obligation of any municipality; provided that this limitation
23 shall not apply to affordable housing units directly attributable to
24 development by the New Jersey Sports and Exposition Authority
25 within the New Jersey Meadowlands District.

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

33 (4) The coordination of affordable housing opportunities by
34 regional entities as identified in this section shall not include
35 activities which would provide housing units to be located in those
36 municipalities that are eligible to receive aid under the "Special
37 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
38 are coextensive with a school district which qualified for
39 designation as a "special needs district" pursuant to the "Quality
40 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at
41 any time in the last 10 years have been qualified to receive
42 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall
43 within the jurisdiction of any of the regional entities specified in
44 subsection a. of this section.**]** (Deleted by amendment, P.L. _____,
45 c. _____) (pending before the Legislature as this bill)

46 d. Notwithstanding the provisions of subsection b. of this
47 section, or any other law or regulation to the contrary, for purposes
48 of mixed use projects or qualified residential projects in which a

1 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-
2 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90
3 (C.34:1B-209.3), or both, an "eligible municipality," as defined in
4 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of
5 deciding the percentage of newly-constructed residential units
6 within the project, up to ~~20~~ 10 percent of the total, required to be
7 reserved for occupancy by low or moderate income households.
8 For a mixed use project or a qualified residential project that has
9 received preliminary or final site plan approval prior to the effective
10 date of P.L.2011, c.89, the percentage shall be deemed to be the
11 percentage, if any, of units required to be reserved for low or
12 moderate income households in accordance with the terms and
13 conditions of such approval.
14 (cf: P.L.2011, c.89, s.5)

15

16 17. (New section) It shall be the duty of the Department of
17 Community Affairs to administer the "Fair Housing Act," P.L.1985,
18 c.222 (C.52:27D-301 et al.) and to assist municipalities that are
19 developing toward fulfilling their obligation to provide an
20 appropriate variety and choice of housing, including housing for
21 low- and moderate-income families. The department shall:

22 a. Determine the housing regions of the State, for the use and
23 information of municipalities;

24 b. Promulgate guidelines and criteria for housing elements
25 prepared pursuant to section 19 of the "Municipal Land Use Law,"
26 P.L.1975, c.291 (C.40:55D-28);

27 c. Pursuant to subsection a. of section 19 of P.L. , c. (C.)
28 (pending before the Legislature as this bill), make a determination
29 of whether a municipality is an inclusionary municipality;

30 d. Establish guidelines or model language for covenants or other
31 devices to maintain the affordability of inclusionary units developed
32 pursuant to P.L. , c. (C.) (pending before the Legislature
33 as this bill);

34 e. Establish affirmative marketing requirements for those
35 inclusionary units developed pursuant to section 21 of P.L. ,
36 c. (C.) (pending before the Legislature as this bill); and

37 f. Review and grant approval or disapprove any petition for
38 substantive certification filed prior to the effective date of P.L. ,
39 c. (C.) (pending before the Legislature as this bill). The
40 department may apply the regulations of the Council on Affordable
41 Housing in effect at the time a petition for substantive certification
42 was filed, or may adopt new regulations, or revisions or
43 amendments to existing regulations, concerning petitions for
44 substantive certification. The department shall conduct an interim
45 review of the housing plan of any municipality granted substantive
46 certification.

47 g. The department shall promulgate guidelines for development
48 fees in lieu of construction of fractional dwelling units.

1 Pursuant to the "Administrative Procedure Act," P.L.1968, c.410
2 (C.52:14B-1 et seq.), the Department of Community Affairs may
3 promulgate any rules and regulations necessary to effectuate the
4 purposes of this section, or may adopt new regulations, or revisions
5 or amendment to existing regulations, concerning petitions for
6 substantive certification, and any such regulations, revision, or
7 amendment shall be effective upon filing with the Office of
8 Administrative Law.

9
10 18. (New section) a. Within 60 days following the effective date
11 of P.L. , c. (C.) (pending before the Legislature as this
12 bill), a municipality shall apply to the department for a
13 determination of whether the municipality is an inclusionary
14 municipality that shall be deemed to have provided for its portion of
15 the region's opportunity for low- and moderate-income housing.

16 b. (1) A municipality that has not met the criteria in section 19
17 of P.L. c. (C.) (pending before the Legislature as this bill)
18 may reapply to the department at any time during the ten-year
19 planning cycle, based upon additional evidence that those criteria
20 have been satisfied.

21
22 19. (New section) a. The department shall determine that a
23 municipality is an inclusionary municipality if:

24 (1) at least seven and one-half percent of its total present housing
25 stock is price restricted units; or

26 (2) at least 33 percent of the housing stock is: single-family
27 attached housing; or mobile homes located in a mobile home park
28 as defined in subsection d. of section 3 of P.L.1983, c.386
29 (C.40:55D-102); or multiple dwellings as defined pursuant to
30 subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3), provided
31 no less than one-half of the housing stock described in this
32 paragraph is rental housing; or

33 (3) it adopts zoning ordinances or incorporates into its Master
34 Plan prepared pursuant to section 19 of P.L.1975, c.291 (C.40:55D-
35 28) standards that contain:

36 (a) an analysis of the municipality's current housing stock;

37 (b) a plan pertaining to how the municipality will satisfy the
38 obligation pursuant to Section 20 of P.L. , c. (C.) (pending
39 before the Legislature as this bill), which may include, the provision
40 of funding sources and other incentives to encourage the
41 development of on-site and off-site low and moderate income
42 housing developments; construction by non-profit developers of
43 100 percent low and moderate income housing developments; the
44 construction of accessory apartments; programs to purchase and
45 mark down existing units; construction of supportive and special
46 needs housing; extension of existing affordability controls; and
47 other innovative means to provide for a variety and choice of
48 housing opportunities for low and moderate income citizens.

- 1 (c) a detailed analysis of the municipality's existing low and
2 moderate income housing stock; and
- 3 (d) a detailed plan providing for any municipal action, including
4 rehabilitation, necessary to address the needs of a municipality's
5 low- and moderate-income households residing in dilapidated or
6 unsuitable housing;
- 7 b. (1) In making a determination pursuant to subsection a.,
8 paragraph (1) or (2), the department shall give special needs
9 housing units newly constructed following the effective date of
10 P.L. , c. (C.) (pending before the Legislature as this bill)
11 twice as much weight as their actual proportion of a municipality's
12 housing stock when making a determination of whether a
13 municipality is an inclusionary municipality.
- 14 (2) In making a determination pursuant to paragraph (2) of
15 subsection a. of this section, the department may exclude buildings
16 determined to be luxury dwellings.
- 17 (3) Upon filing of ordinances or Master Plan elements with the
18 Department of Community Affairs pursuant to paragraph (3) of
19 subsection a. of this section, the filing shall be deemed to satisfy the
20 criteria in this section. In the event of a challenge to this filing, the
21 Commissioner of Community Affairs will undertake a limited
22 review of the municipality's filing, for the sole purpose of
23 determining whether the filing meets the criteria of paragraph (3) of
24 subsection a. of this section.
- 25 c. For units constructed following the effective date of
26 P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price
27 restricted for purposes of a determination pursuant to this section, a
28 unit shall be adaptable as described in section 5 of P.L.2005, c.350
29 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-
30 311a).
- 31 d. A municipality that received substantive certification under
32 N.J.A.C.5:96 and N.J.A.C.5:97, the rules of the Council on
33 Affordable Housing for the period beginning June 2, 2008, shall be
34 considered an inclusionary municipality pursuant to this section
35 until the end of its approved certification period; provided that the
36 municipality continues to fully and faithfully implement the
37 provisions of its fair-share plan.
- 38 e. The department shall review any application for a
39 determination that a municipality is an inclusionary municipality
40 and render a determination within 90 days. A determination of
41 whether a municipality is inclusionary shall be based upon a
42 municipality's existing housing stock. Units transferred through a
43 regional contribution agreement shall be fully credited to the
44 sending municipality for purposes of determining whether a
45 municipality is an inclusionary municipality.
- 46 f. A determination by the commissioner or department pursuant
47 to this section shall be deemed a final agency action appealable to
48 the Appellate Division of the Superior Court.

1 For purposes of this section, "single family attached housing"
2 means two or more dwelling units sharing a wall that extends from
3 ground to roof with an adjoining unit, with no other units above or
4 below, with separate major utility systems and metering.

5
6 20. (New section) a. (1) For any new residential development
7 project, as defined in subsection t. of section 4 of P.L.1985, c.222
8 (C.52:27D-304), and any redevelopment, rehabilitation, infill
9 development, or adaptive reuse of a residential development project
10 that would qualify as a residential development project if it was a
11 new construction, a municipality shall require that one out of every
12 10 residential housing units proposed as part of that project be
13 reserved for occupancy as low income or moderate income housing.
14 For the purposes of this reservation, one special needs housing unit
15 shall count as two housing units.

16 (2) For any new small residential development project, as
17 defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-
18 304), and any redevelopment, rehabilitation, infill development, or
19 adaptive reuse of a residential or small residential development
20 project that would qualify as a small residential development
21 project if it was new construction, a municipality shall require that
22 one out of every 20 residential housing units proposed as part of
23 that project be reserved for occupancy as low-income or moderate-
24 income housing. For the purposes of this reservation, one special
25 needs housing unit shall count as two housing units. Nothing in this
26 paragraph shall be construed to require the developer of a small
27 residential development project to pay a development fee when the
28 developer is providing for the on-site construction of affordable
29 units.

30 b. Where land use or other local government approvals are
31 required, a municipality shall make a reasonable effort to facilitate
32 the economic viability of an inclusionary development developed
33 pursuant to the requirements of this section.

34 c. A municipality, in evaluating the economic viability of an
35 application for an inclusionary development, may be guided by the
36 applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the
37 regulations of the Council on Affordable Housing for the housing
38 round beginning June 2, 2008.

39 d. Nothing in this section shall preclude a municipality from
40 imposing additional inclusionary requirements upon redevelopment
41 or rehabilitation projects or any form of infill development or
42 adaptive reuse of a residential development project.

43 e. 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
47 constructed, rehabilitated or developed pursuant to this section, the
48 higher the number of units may be determined by the municipality.

1 f. At least 50 percent of the units reserved for low-income or
2 moderate-income housing pursuant to this section shall be self-
3 contained residential dwelling units with a kitchen, sanitary
4 facilities, sleeping quarters and a private entrance, and which are
5 available to the general public and not restricted to any specific
6 segment of the population.

7 g. A municipality that has petitioned for substantive certification
8 prior to the effective date of P.L. , c. (C.) (pending before
9 the Legislature as this bill), or that has received substantive
10 certification from the former Council on Affordable Housing or the
11 State Planning Commission, pursuant to section 17 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill), shall be
13 exempt from the requirements of this section for the duration of the
14 housing round for which the municipality is certified. This section
15 shall not be construed to apply to a municipality whose petition for
16 substantive certification is dismissed or otherwise determined to be
17 invalid.

18 h. A municipality may withdraw a petition for substantive
19 certification or act to withdraw its certification and elect to comply
20 with the requirements of P.L. , c. (C.) (pending before the
21 Legislature as this bill) by satisfying the requirements of this
22 section.

23

24 21. (New section) a. A municipality may authorize the
25 following alternate means to satisfy the set-aside requirements
26 imposed by section 20 of P.L. , c. (C.) (pending before
27 the Legislature as this bill):

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

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

32 (3) Permitting a developer to pay a development fee in lieu of
33 constructing a portion of the inclusionary units into the New Jersey
34 Affordable Housing Trust Fund established pursuant to section 19
35 of P.L.1985, c.222 (C.52:27D-320) for the construction of
36 affordable housing;

37 (4) Assisting a municipally-sponsored 100 percent affordable
38 development;

39 (5) Permitting construction of Elder Cottage Housing
40 Opportunity units;

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

43 (7) permitting the purchase or subsidization of units that are
44 subsequently sold or rented to low- and moderate-income
45 households at affordable sale prices or rents ("buy down, write
46 down"); and

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

4 b. Any person engaging in a residential development project
5 shall file an application to the zoning board of adjustment for
6 approval of alternate means of satisfying the set-aside requirements
7 imposed by section 20 of P.L. , c. (C.) (pending before
8 the Legislature as this bill). In the case of an application, the board
9 of adjustment shall limit its determination to approving and
10 determining which, and to what extent alternate means may be
11 employed, and shall include the reasons for its determination in the
12 findings of its decision thereon.

13 For purposes of this section, "rehabilitation" means the repair,
14 renovation, alteration, reconstruction of a building or structure
15 containing a dwelling space, pursuant to the rehabilitation subcode
16 adopted by the Commissioner of Community Affairs pursuant to
17 section 5 of the "State Uniform Construction Code Act," P.L.1975,
18 c.217 (C.52:27D-123), that includes the rehabilitation of a major
19 system and a minimum average investment for hard costs of
20 \$10,000 per unit. The Department of Community Affairs shall
21 develop standards for minimum documentation for qualifying
22 rehabilitation.

23
24 22. (New section) A municipality may provide a preference for
25 occupancy of up to one-half of the units required to be provided
26 pursuant to section 20 of P.L. , c. (C.) (pending before the
27 Legislature as this bill), to those households that have at least one
28 member who works in the municipality and to those households that
29 have at least one member who resides in the municipality.

30
31 23. (New section) a. In any municipality not determined to be
32 an inclusionary municipality by the department as described in
33 section 19 of P.L. , c. (C.) (pending before the Legislature
34 as this bill), when a proposed residential development project in
35 which at least 10 percent of the dwelling units are set aside for low-
36 or moderate-income households requires approval pursuant to the
37 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
38 of a subdivision, site plan or conditional use, or a variance,
39 including a variance pursuant to subsection d. of section 57 of
40 P.L.1975, c.291 (C.40:55D-70), the planning board shall, pursuant
41 to section 47 of P.L.1975, c.291 (C.40:55D-60), review the request
42 for a subdivision, site plan or conditional use, or a variance, and the
43 development including an affordable housing unit shall be deemed
44 to be an inherently beneficial use, and the developer shall be
45 required to make only a showing that the variance or other relief
46 can be granted without substantial detriment to the public good.

47 b. The provisions of this section shall only apply to a
48 municipality's vacant, developable property.

1 c. The provisions of this section shall not apply to a
2 municipality that has adopted an ordinance that reserves, for use as
3 workforce housing as defined in subsection s. of section 4 of
4 P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant,
5 developable property having reasonable access to sewer service, for
6 residential use.

7
8 24. (New section) If any persons benefitting from a housing
9 program established pursuant to P.L. , c. (C.) (pending
10 before the Legislature as this bill) that assists persons who have
11 experienced, or may experience, the foreclosure and loss of their
12 personal residence, or addresses the needs of low- and moderate-
13 income households residing within the municipality, are otherwise
14 income qualified to occupy such housing under federal or State law,
15 then any affirmative marketing requirements contained in
16 regulations promulgated to effectuate the program shall be waived
17 to permit the persons to occupy, rent, or purchase new or
18 rehabilitated affordable housing units that they may have previously
19 occupied or owned.

20
21 25. (New section) a. A municipality shall not be liable for any
22 unmet housing obligation based on regulations promulgated by the
23 Council on Affordable Housing pursuant to the "Fair Housing Act,"
24 P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time
25 period prior to the effective date of P.L. , c. (C.) (pending
26 before the Legislature as this bill).

27 b. Notwithstanding subsection a. of this section, a municipality
28 shall not alter the zoning classification of any inclusionary
29 development site that is by judgment of repose, court order, or
30 settlement in exclusionary zoning litigation, designated or reserved
31 for purposes of satisfying a municipality's fair share of the region's
32 housing opportunities.

33 c. Subsection b. of this section shall not apply to any property
34 that is the subject of pending exclusionary litigation that has not
35 reached final judgment through and including all appeals, including
36 an appeal to the Supreme Court of New Jersey.

37
38 26. (New section) a. No exclusionary zoning action naming a
39 municipality as a defendant shall be filed for 365 days following the
40 effective date of P.L. , c. (C.) (pending before the
41 Legislature as this bill).

42 b. Subsection a. of this section shall not apply to a municipality
43 subject to a court order to provide affordable housing prior to the
44 effective date of P.L. , c. (C.) (pending before the
45 Legislature as this bill).

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

1 which shall take judicial notice of the statutory intent stated
2 hereunder.

3
4 27. (New section) The provisions of P.L. , c. (C.)
5 (pending before the Legislature as this bill) shall be severable, and
6 if any of its provisions shall be held to be unconstitutional, the
7 decision of the court shall not affect the validity of the remaining
8 provisions of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10
11 28. Section 7 of P.L.1985, c.222 (C.52:27D-307) is repealed.

12
13 29. The following sections are repealed:

14 Section 5 of P.L.1985 c.222 (C.52:27D-305);
15 Section 6 of P.L.1985, c.222 (C.52:27D-306);
16 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
17 Section 8 of P.L.1985, c.222 (C.52:27D-308);
18 Section 9 of P.L.1985, c.222 (C.52:27D-309);
19 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
20 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
21 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);
22 Section 13 of P.L.1985, c.222 (C.52:27D-313);
23 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
24 Section 14 of P.L.1985, c.222 (C.52:27D-314);
25 Section 15 of P.L. 1985, c.222 (C.52:27D-315);
26 Section 16 of P.L.1985, c.222 (C.52:27D-316);
27 Section 17 of P.L.1985, c.222 (C.52:27D-317);
28 Section 18 of P.L.1985, c.222 (C.52:27D-318);
29 Section 19 of P.L.1985, c.222 (C.52:27D-319);
30 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
31 Section 8 of P.L.2008, c.46 (C.52:27D-329.2);
32 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
33 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);
34 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and
35 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

36
37 30. This act shall take effect immediately, except that sections 3
38 and 28 shall be inoperative until the first day of the seventh month
39 following enactment.

40
41
42 STATEMENT

43
44 This bill reforms the State's affordable housing laws in
45 accordance with the Governor's Conditional Veto of A-1907 of
46 2014. If enacted, this legislation would abolish the Council on
47 Affordable Housing ("COAH") established pursuant to the "Fair
48 Housing Act," N.J.S.A.52:27D-301 et al., and would allow

1 municipalities to administer their own affordable housing
2 obligations. The bill would do away with State-imposed
3 calculations of affordable housing need and would permit local
4 governments to take charge of planning for opportunities for
5 affordable housing. This bill charges the Department of
6 Community Affairs ("DCA") with assisting municipalities in
7 facilitating opportunities for affordable housing.

8 If enacted, this legislation would transfer any remaining
9 authority from the abolished COAH to DCA. The bill repeals the
10 sections of law establishing COAH.

11 Within six months of enactment, this bill directs municipalities
12 to apply to DCA to determine inclusionary status. The bill directs
13 DCA to designate municipalities as inclusionary if at least 7.5
14 percent of its total present housing stock is price-restricted, if at
15 least one third of its housing stock can be categorized as either
16 single-family attached, mobile or multiple dwellings, or if the
17 municipality adopts zoning ordinances or incorporates into its
18 Master Plan new standards to encourage the development of
19 affordable housing. These new standards may include 10 percent
20 set-aside requirements for certain new residential developments, or
21 alternative requirements. In municipalities that have not obtained
22 inclusionary status, proposed developments that satisfy the 10
23 percent set-aside requirement may be deemed inherently beneficial
24 for the purposes of obtaining a zoning variance.

25 Under this bill, municipalities that received substantive
26 certification under N.J.A.C.5:96 and N.J.A.C.5:97, the COAH rules
27 for the period beginning June 2, 2008, will be considered
28 inclusionary until the end of their approved certification periods.

29 In order to ease the pressure for municipalities to meet affordable
30 housing goals, this bill would permit units already transferred
31 through regional contribution agreements ("RCAs") to be credited
32 to the sending municipality for the purposes of determining
33 inclusionary status.

34 The bill also re-instates the moratorium on the imposition of fees
35 on non-residential construction projects that expired on July 1,
36 2013, and continues the moratorium through December 31, 2014.
37 The bill requires municipalities to return any monies paid, due to
38 the previous expiration of the moratorium, during the time period
39 commencing on July 1, 2013 through the effective date of the bill.
40 However, the bill does not require municipalities that are eligible to
41 collect non-residential development fees to refund monies that have
42 already been expended by the municipality on affordable housing
43 projects.