ASSEMBLY, No. 1159



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Authorizes workforce housing transfer agreements for meeting moderate income housing obligation; establishes funding preferences for receiving municipalities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act authorizing workforce housing transfer agreements, amending various parts of the statutory law, and supplementing P.L.1985, c.222.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:

a. The affordable housing needs of the State should be satisfied in an equitable manner throughout all municipalities, regardless of demographic profile;

b. For many municipalities, the satisfaction of existing fair share affordable housing obligations could potentially result in significant challenges to local population, infrastructure, and school resources;

c. The workforce housing transfer agreement, established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), is intended as a mechanism to allow municipalities to more effectively address the infrastructural challenges of providing affordable housing, while also ensuring that affordable housing is provided for the low and moderate income population of the State in an equitable manner throughout both urban and suburban locations;

d. Through a workforce housing transfer agreement, if the governing body of a municipality believes it is unreasonably burdened by a large affordable housing obligation, the municipality would be able transfer some or all of the moderate income portion of its obligation to another municipality in the State, but would still be responsible for the low income portion of the obligation;

e. As a consequence of a workforce housing transfer agreement, a municipality that accepts an additional moderate income housing obligation is likely to experience increased pressure on existing local infrastructure;

f. Although workforce housing transfer agreements are intended to serve as an important tool in the construction of affordable housing, these infrastructural concerns may deter some municipalities from entering into the agreements;

g. By providing preferential funding for infrastructure improvement projects in municipalities that accept additional moderate income housing obligations, P.L. , c. (C. ) (pending before the Legislature as this bill) is meant to ensure that municipalities which enter into workforce housing transfer agreements are not overburdened by potential infrastructural needs;

h. Furthermore, P.L. , c. (C. ) (pending before the Legislature as this bill) rewards those municipalities willing to

accept an additional affordable housing obligation by broadening the scope of what constitutes moderate income housing within their boundaries; and

i. Finally, by providing that sending municipalities may only transfer the moderate income portion of their affordable housing obligations, P.L. , c. (C. ) (pending before the Legislature as this bill) is meant to ensure that housing is provided throughout the State in an equitable manner, and that municipalities which choose to send some of their obligation continue to hold a substantial, enforceable responsibility for providing housing to the most vulnerable segment of the population.

2. (New section) a. On or before the first day of the sixth month next following enactment, the Executive Director of the Housing and Mortgage Finance Agency, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt any rules and regulations necessary for the implementation of P.L. , c. (C. ) (pending before the Legislature as this bill), including, but not limited to standards for adjustments to affordability average requirements in a municipality engaged in a workforce housing transfer agreement, in accordance with subsection h. of section 12 of P.L.1985, c.222 (C.52:27D-312).

b. On or before the first day of the sixth month next following enactment, the Commissioner of Community Affairs, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt any rules and regulations necessary for the implementation of P.L. , c. (C. ) (pending before the Legislature as this bill), including, but not limited to rules and regulations setting forth the safeguards sufficient to ensure that workforce housing transfer agreement funding is applied for purposes consistent with the agreement and with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

3. (New section) a. Notwithstanding any provision of law to the contrary, the Commissioner of Environmental Protection shall, to the extent possible, expedite the review of any permit or approval within the authority of the Department of Environmental Protection that is submitted in conjunction with a proposal to develop low or moderate income housing in a municipality for which the moderate income housing obligation is increased pursuant to a workforce housing transfer agreement, as set forth in section 12 of P.L.1985, c.222 (C.52:27D-312).

b. The Commissioner of Environmental Protection shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the provisions of this section on or before the first day of the sixth month next following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

4. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to read as follows:

2. The Legislature finds that:

a. The New Jersey Supreme Court, through its rulings in South Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983), has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families.

b. In the second Mount Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action."

c. The interest of all citizens, including low and moderate income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.

d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated.

e. The State can maximize the number of low and moderate income units provided in New Jersey by allowing its municipalities to adopt appropriate phasing schedules for meeting their fair share, so long as the municipalities permit a timely achievement of an appropriate fair share of the regional need for low and moderate income housing as required by the Mt. Laurel I and II opinions and other relevant court decisions.

f. The State can also maximize the number of low and moderate income units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State. **[**Because the Legislature has determined, pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in harmony with the Mount Laurel doctrine to permit the transfer of the fair share obligations among municipalities within a housing region, it is necessary and appropriate to create a new program to create new affordable housing and to foster the rehabilitation of existing, but substandard, housing.**]**

g. Since the urban areas are vitally important to the State, construction, conversion and rehabilitation of housing in our urban centers should be encouraged. However, the provision of housing in urban areas must be balanced with the need to provide housing throughout the State for the free mobility of citizens.

h. The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there. While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low and moderate income housing.

i. Certain amendments to the enabling act of the Council on Affordable Housing are necessary to provide guidance to the council to ensure consistency with the legislative intent, while at the same time clarifying the limitations of the council in its rulemaking. Although the court has remarked in several decisions that the Legislature has granted the council considerable deference in its rulemaking, the Legislature retains its power and obligation to clarify and amend the enabling act from which the council derives its rulemaking power, from time to time, in order to better guide the council.

j. The Legislature finds that the use of **[**regional contribution**]** workforce housing transfer agreements, which **[**permits**]** permit municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should **[**no longer**]** be available to municipalities as a mechanism for the creation of **[**affordable**]** moderate income housing **[**by the council**]** , but that pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), regional contribution agreements should no longer be utilized.

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

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

4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

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

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

d. "Moderate income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than **[**50%**]** 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located. “Moderate income housing” also includes workforce housing when used in reference to a receiving municipality that has entered into a workforce housing transfer agreement on or after the effective date of P.L. , c.    (C.          ) (pending before the Legislature as this bill).

e. "Resolution of participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with P.L.1985, c.222 (C.52:27D-301 et al.).

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

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

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

j. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers, and economic projections prepared by the State Planning Commission established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

k. "Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

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

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

n. “Affordability average” means an average of the percentage of median income, by household size for an applicable county, at which price-restricted units in a development are affordable to low and moderate income households, calculated in accordance with the rules and regulations of the agency.

o. “Moderate income housing share” means the percentage of all price-restricted housing units in new developments within a municipality that are permitted to be moderate income units, as opposed to low-income units.

p. “Workforce housing transfer agreement” means an agreement concerning the transfer of a portion of a municipality’s fair share affordable housing obligation, entered into pursuant to section 12 of P.L.1985, c.222 (C.52:27D-312).

q. "Workforce housing" means housing affordable to, according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied by, or reserved for occupancy by, a household with a gross household income equal to more than 80 percent but less than 120 percent of the median gross household income for households of the same size within the housing region in which the housing is located, and that may be reserved for occupancy by a household with at least one member working or living in the municipality upon submittal of the application for

workforce housing.

(cf: P.L.2017, c.131, s.199)

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

11. a. In adopting its housing element, the municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low and moderate income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low and moderate income housing within the municipality, as well as such other techniques as may be published by the council or proposed by the municipality:

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

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

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

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

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

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

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

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

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property, excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing.

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

d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which will be affordable to persons of low and moderate income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited as permitted under the rules of the council towards the fulfillment of the municipality's fair share of low and moderate income housing.

f. It having been determined by the Legislature that the provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is a public purpose, a municipality or municipalities may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low and moderate income persons, providing that any private advantage is incidental.

g. A municipality which has received substantive certification from the council, and which has actually effected the construction of the affordable housing units it is obligated to provide, may amend its affordable housing element or zoning ordinances without the approval of the council.

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

i. The council, upon the application of a municipality and a developer, may approve reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development.

j. A municipality may enter into an agreement with a developer or residential development owner to provide a preference for affordable housing to low to moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. Following the initial 120-day marketing period, previously qualified applicants and future qualified applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, shall be placed on a special waiting list as well as the general waiting list. The veterans on the special waiting list shall be given preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage. Any agreement to provide affordable housing preferences for veterans pursuant to this subsection shall not affect a municipality's ability to receive credit for the unit from the council, or its successor.

k. The municipality may propose that a portion of its fair share obligation shall be met through a workforce housing transfer agreement. The housing element shall identify an alternate way of meeting that portion of its fair share obligation if a workforce housing transfer agreement is not entered. The municipality shall provide a statement of its reasons for the proposal.

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

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

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

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

c. **[**Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1 et al.), regional contribution agreements shall be approved by the**]** The council shall approve a workforce housing transfer agreement that conforms to the requirements of this section, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State development and redevelopment plan. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the council shall also determine whether or not the agreement is in accordance with sound, comprehensive regional planning. The council shall review the agreement to confirm that it contains sufficient safeguards to ensure that contributions to the receiving municipality are applied for purposes consistent with the agreement and with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, **[**and that the agreement**]** is consistent with sound, comprehensive regional planning, and contains sufficient safeguards to ensure that contributions are applied for acceptable purposes, the council shall approve the **[**regional contribution**]** workforce housing transfer agreement by resolution. All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the council may prescribe, beyond which the council shall make those determinations and no fee shall be paid to the county planning board or agency pursuant to this subsection.

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

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

f. The council shall establish guidelines for the duration and amount of contributions in **[**regional contribution**]** workforce housing transfer agreements. In doing so, the council shall give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low and moderate income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Contributions may be prorated in municipal appropriations occurring over a period not to exceed ten years and may include an amount agreed upon to compensate or partially compensate the receiving municipality for infrastructure or other costs generated to the receiving municipality by the development. Appropriations shall be made and paid directly to the receiving municipality or municipalities or to the agency or other governmental entity designated by the council, as the case may be.

g. The council shall require receiving municipalities to file annual reports with the agency setting forth the progress in implementing a project funded under a **[**regional contribution**]** workforce housing transfer agreement, and the agency shall provide the council with its evaluation of each report. The council shall take such actions as may be necessary to enforce a **[**regional contribution**]** workforce housing transfer agreement with respect to the timely implementation of the project by the receiving municipality.

**[**No consideration shall be given to any regional contribution agreement for which the council did not complete its review and grant approval prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.). On or after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), no regional contribution agreement shall be entered into by a municipality, or approved by the council or the court.**]**

h. A workforce housing transfer agreement shall not transfer any portion of a municipality’s fair share obligation that is attributable to low income housing. Following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), two municipalities may enter into a workforce housing transfer agreement to transfer to the receiving municipality a portion of the sending municipality’s fair share obligation that is attributable to moderate income housing, as follows:

(1) A workforce housing transfer agreement shall decrease the moderate income housing share of the sending municipality in proportion to the number of units transferred pursuant to the agreement. The moderate income housing share of the sending municipality shall equal zero percent if the municipality transfers 50 percent of its fair share obligation. The affordability average of price-restricted units in a new development in the sending municipality shall be adjusted to a lower percentage of median income, by household size for the applicable county, in proportion to the number of moderate income units that were transferred as a result of the workforce housing transfer agreement;

(2) A workforce housing transfer agreement shall increase the moderate income housing share of the receiving municipality in proportion to the number of units accepted pursuant to the agreement. The affordability average of price-restricted units in a new development in the receiving municipality shall be adjusted to a higher percentage of median income, by household size for the applicable county, in proportion to the number of moderate income units that were added as a result of the workforce housing transfer agreement; and

(3) A workforce housing transfer agreement shall only be approved if the sending municipality provides the receiving municipality funds in an amount not less than the amount of funds necessary to defray the costs of construction associated with fulfilling the moderate income housing obligations, transferred pursuant to the agreement, if the construction occurred within the sending municipality.

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

8. Section 14 of P.L.1985, c.222 (C.52:27D-314) is amended to read as follows:

14. Unless an objection to the substantive certification is filed with the council by any person within 45 days of the publication of the notice of the municipality's petition, the council shall review the petition and shall issue a substantive certification if it shall find that:

a. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subsection c. of section 7 of **[**this act**]** P.L.1985, c.222 (C.52:27D-307); and

b. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations, and the affirmative measures in the housing element and implementation plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution or workforce housing transfer agreement approved by the council.

In conducting its review, the council may meet with the municipality and may deny the petition or condition its certification upon changes in the element or ordinances. Any denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or conditions. If, within 60 days of the council's denial or conditional approval, the municipality refiles its petition with changes satisfactory to the council, the council shall issue a substantive certification.

Once substantive certification is granted, the municipality shall have 45 days in which to adopt its fair share housing ordinance approved by the council.

(cf: P.L.1985, c.222, s.14)

9. Section 17 of P.L.1985, c.222 (C.52:27D-317) is amended to read as follows:

17. a. In any exclusionary zoning case filed against a municipality which has a substantive certification and in which there is a requirement to exhaust the review and mediation process pursuant to section 16 of **[**this act**]** P.L.1985, c.222 (C.52:27D-316), there shall be a presumption of validity attaching to the housing element and ordinances implementing the housing element. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the housing element and ordinances implementing the housing element do not provide a realistic opportunity for the provision of the municipality's fair share of low and moderate income housing after allowing for the implementation of any **[**regional contribution**]** workforce housing transfer agreement approved by the council.

b. There shall be a presumption of validity attaching to any regional contribution or workforce housing transfer agreement approved by the council. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the agreement does not provide for a realistic opportunity for the provision of low and moderate income housing within the housing region. A workforce housing transfer agreement shall not be construed as invalid due to a resulting decrease in the fair share obligation of the housing region in which a sending municipality is located.

c. The council shall be made a party to any exclusionary zoning suit against a municipality which receives substantive certification, and shall be empowered to present to the court its

reasons for granting substantive certification.

(cf: P.L.1985, c.222, s.17)

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

20. There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes, including, but not limited to, the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the Statewide non-residential development fees collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from municipal development trust funds, or other monies as may be dedicated, earmarked, or appropriated by the Legislature for the purposes of the fund. All references in any law, order, rule, regulation, contract, loan, document, or otherwise, to the "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." The department shall be permitted to utilize annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

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

Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide non-residential development fees, a priority for funding shall be established for projects in municipalities that have petitioned the council for substantive certification. Of those monies deposited into the “New Jersey Affordable Housing Trust Fund” that are derived from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), a priority for funding shall be established for projects in municipalities for which the moderate income housing obligation is increased pursuant to a workforce housing transfer agreement, as set forth in section 12 of P.L.1985, c.222 (C.52:27D-312).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.2017, c.131, s.200)

11. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to read as follows:

21. The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing.

a. Of the bond authority allocated to it under section 24 of P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less than **[**25%**]** 25 percent to be used in conjunction with housing to be constructed or rehabilitated with assistance under **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.).

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have received substantive certification from the council, or which have been subject to a builder's remedy or which are in furtherance of a regional contribution or workforce housing transfer agreement approved by the council. During the first 12 months from the effective date of **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.) and for any additional period which the council may approve, the agency may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution or workforce housing transfer agreement; provided the affordable housing program will meet all or in part a municipal low and moderate income housing obligation.

c. Assistance provided pursuant to this section may take the form of grants or awards to municipalities, prospective home purchasers, housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.), or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing low and moderate income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for low and moderate income housing, including infrastructure projects directly facilitating the construction of low and moderate income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan. When awarding grants or loans for affordable housing programs, the agency shall give preference to those programs situated in municipalities for which the moderate income housing obligation is increased pursuant to a workforce housing transfer agreement, as set forth in section 12 of P.L.1985, c.222 (C.52:27D-312).

f. In consultation with the council, the agency shall establish requirements and controls to insure the maintenance of housing assisted under **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to low and moderate income households for a period of not less than 20 years; provided that the agency may establish a shorter period upon a determination that the economic feasibility of the program is jeopardized by the requirement and the public purpose served by the program outweighs the shorter period. The controls may include, among others, requirements for recapture of assistance provided pursuant to **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.) or otherwise which promotes the provision or maintenance of low and moderate income housing, the agency may waive restrictions on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor.

g. The agency may establish affordable housing programs through the use or establishment of subsidiary corporations or development corporations as provided in P.L.1983, c.530 (C.55:14K-1 et seq.). The subsidiary corporations or development corporations shall be eligible to receive funds provided under **[**this act**]** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted purpose.

h. The agency shall provide assistance, through its bonding powers or in any other manner within its powers, to the grant and loan program established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

(cf: P.L.2004, c.140, s.5)

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

12. The Legislature finds and declares that:

a. The transfer of a portion of the fair share obligations among municipalities has proven to not be a viable method of ensuring that an adequate supply and variety of low and very low income housing choices are provided in municipalities experiencing growth. Therefore, although a workforce housing transfer agreement shall be available pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), as a mechanism for the transfer of a municipality’s moderate income housing share, the use of a regional contribution agreement shall no longer be permitted **[**under**]** pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

b. **[**Although the elimination of the regional contribution agreement as a tool for the production of affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on some proposed agreements awaiting approval, it is for a public purpose and for the public good that such contracts be declared void for the current and future housing obligation rounds.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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

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

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

13. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read as follows:

5. The requirements of this act shall not apply to:

a. Depository institutions; but subsidiaries and service corporations of these institutions shall not be exempt. A depository institution may register with the department for the purpose of sponsoring individuals, licensed as mortgage loan originators subject to subparagraph (b) of paragraph (1) of subsection c. of section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such registered entity obtains and maintains bond coverage for mortgage loan originators consistent with section 13 of P.L.2009, c.53 (C.17:11C-63). A depository institution registered with the department in accordance with this subsection a. shall otherwise remain exempt from the licensing requirements of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. A registered mortgage loan originator that is registered under the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

c. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

d. A person licensed as a real estate broker or salesperson pursuant to R.S.45:15-1 et seq., and not engaged in the business of a residential mortgage lender or residential mortgage broker. Any person holding a license under this act as a residential mortgage lender or broker shall be exempt from the licensing and other requirements of R.S.45:15-1 et seq. in the performance of those functions authorized by this act.

e. Any employer, other than a residential mortgage lender, who provides residential mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest.

f. The State of New Jersey or a municipality, or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution or workforce housing transfer agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution or workforce housing transfer agreement, to finance the provision of affordable housing by extending loans or advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated.

g. Any individual who offers or negotiates terms of a residential mortgage loan:

(1) with or on behalf of an immediate family member; or

(2) secured by a dwelling that serves as the individual's residence.

h. Any person who, during a calendar year takes three or fewer residential mortgage loan applications or offers or negotiates the terms of three or fewer residential mortgage loans or makes three or fewer residential mortgage loans related to manufactured housing structures which are:

(1) titled by the New Jersey Motor Vehicle Commission;

(2) located in a mobile home park as defined in subsection e. of section 3 of P.L.1983, c.400 (C.54:4-1.4); and

(3) exempt from taxation as real property pursuant to subsection b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

i. A bona fide not for profit entity and any individuals directly employed by that entity, so long as the entity maintains its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and otherwise meets the definition of "bona fide not for profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically determined by the department in accordance with rules established by the commissioner.

(cf: P.L.2018, c.108, s.3)

14. Section 9 of P.L.2000, c.72 (C.18A:7G-9) is amended to read as follows:

9. a. State debt service aid for capital investment in school facilities for a district other than an SDA district which elects not to finance the project under section 15 of P.L.2000, c.72 (C.18A:7G-15), shall be distributed upon a determination of preliminary eligible costs by the commissioner, according to the following formula:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.)

where

A = B x AC/P x DAP x M, with AC/P =1

whenever AC/P would otherwise yield a number greater than one,

and where:

B is the district's debt service for the individual issuance for the fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of P.L.2000, c.72 (C.18A:7G-7);

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district's district aid percentage as defined pursuant to section 3 of P.L.2000, c.72 (C.18A:7G-3) and where DAP shall not be less than 40%; and

M is a factor representing the degree to which a district has fulfilled maintenance requirements for a school facilities project determined pursuant to subsection b. of this section.

For county special services school districts, DAP shall be that of the county vocational school district in the same county.

Notwithstanding the provisions of this subsection to the contrary, DAP for a county vocational school district school facilities project that is approved by the commissioner following the effective date of P.L.2009, c.185 shall equal the greater of the district's district aid percentage as defined pursuant to section 3 of P.L.2000, c.72 (C.18A:7G-3) or the percentage of the students in the county vocational school district's resident enrollment who reside in SDA districts; except that DAP shall not be less than 40% or greater than 90%.

Notwithstanding the provisions of this subsection to the contrary, DAP for a district school facilities project that is approved by the commissioner following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and that is located within a school district that contains a municipality for which the moderate income housing obligation is increased pursuant to a workforce housing transfer agreement, as set forth in section 12 of P.L.1985, c.222 (C.52:27D-312), shall be increased by not less than 10% and not more than 30%, as determined by the commissioner based on the extent to which the agreement necessitated the district school facilities project, except that the DAP shall not be greater than 90%.

b. The maintenance factor (M) shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:

(1) Effective ten years from the date of the enactment of P.L.2000, c.72 (C.18A:7G-1 et al.), the maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the district fails to demonstrate over the ten years preceding issuance a net investment in maintenance of the related school facility of at least 2% of the replacement cost of the school facility, determined pursuant to subsection b. of section 7 of P.L.2000, c.72 (C.18A:7G-7) using the area cost allowance of the year ten years preceding the year in which the school bonds are issued.

(2) For new construction, additions, and school facilities aided under subsection b. of section 7 of P.L.2000, c.72 (C.18A:7G-7) supported by financing issued for projects approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the following schedule for all school facilities projects for which the district fails to demonstrate in the prior fiscal year an investment in maintenance of the related school facility of at least two-tenths of 1% of the replacement cost of the school facility, determined pursuant to subsection b. of section 7 of P.L.2000, c.72 (C.18A:7G-7).

Maintenance Percentage Maintenance Factor (M)

.199% - .151% 75%

.150% - .100% 50%

Less than .100% Zero

(3) Within one year of the enactment of P.L.2000, c.72 (C.18A:7G-1 et al.), the commissioner shall promulgate rules requiring districts to develop a long-range maintenance plan and specifying the expenditures that qualify as an appropriate investment in maintenance for the purposes of this subsection.

c. Any district which obtained approval from the commissioner since September 1, 1998 and prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) of the educational specifications for a school facilities project or obtained approval from the Department of Community Affairs or the appropriately licensed municipal code official since September 1, 1998 of the final construction plans and specifications, and the district has issued debt, may elect to have the final eligible costs of the project determined pursuant to section 5 of P.L.2000, c.72 (C.18A:7G-5) and to receive debt service aid under this section or under section 10 of P.L.2000, c.72 (C.18A:7G-10).

Any district which received approval from the commissioner for a school facilities project at any time prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), and has not issued debt, other than short term notes, may submit an application pursuant to section 5 of P.L.2000, c.72 (C.18A:7G-5) to have the final eligible costs of the project determined pursuant to that section and to have the New Jersey Economic Development Authority construct the project; or, at its discretion, the district may choose to receive debt service aid under this section or under section 10 of P.L.2000, c.72 (C.18A:7G-10) or to receive a grant under section 15 of P.L.2000, c.72 (C.18A:7G-15).

For the purposes of this subsection, the "issuance of debt" shall include lease purchase agreements in excess of five years.

d. For school bonds issued for a school facilities project after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) and prior to the effective date of P.L.2008, c.39 (C.18A:7G-14.1 et al.), State debt service aid shall be calculated in accordance with the provisions of this section as the same read before the effective date of P.L.2008, c.39 (C.18A:7G-14.1 et al.).

(cf: P.L.2009, c.185, s.2)

15. Section 25 of P.L.1984, c.73 (C.27:1B-25) is amended to read as follows:

25. a. Notwithstanding the provisions of subtitle 4 of Title 27 of the Revised Statutes and P.L.1946, c.301 (C.27:15A-1 et seq.), the commissioner may, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law, allocate to counties and municipalities funds for the planning, acquisition, engineering, construction, reconstruction, repair, resurfacing and rehabilitation of public highways and the planning, acquisition, engineering, construction, reconstruction, repair, maintenance and rehabilitation of public transportation projects and of other transportation projects which a county or municipality may be authorized by law to undertake.

b. The commissioner shall, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law, allocate at his discretion State aid to counties and municipalities for transportation projects, except that the amount to be appropriated for this program shall be seven percent of the total amount appropriated pursuant to subsection d. of this section. This State aid shall be set aside prior to any formula allocations provided for in subsections c., d., e., f., and g. of this section, and shall be known as the "Local Aid Infrastructure Fund." In the fiscal year commencing July 1, 2016, any amount appropriated to the Local Aid Infrastructure Fund above $7,500,000 shall be deposited into the State Transportation Infrastructure Bank Fund, established pursuant to section 34 of P.L.2016, c.56 (C.58:11B-10.4).

c. The commissioner shall, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law and pursuant to the provisions of subsections b. and d. of this section, allocate State aid to municipalities for public highways under their jurisdiction. The amount to be appropriated shall be allocated on the basis of the following distribution factor:

Pc Cm

DF = \_\_\_\_ + \_\_\_\_

Ps Sm

where, DF equals the distribution factor

Pc equals county population

Ps equals State population

Cm equals municipal road mileage within the county

Sm equals municipal road mileage within the State.

After the amount of aid has been allocated based on the above formula, the commissioner shall determine priority for the funding of municipal projects within each county, based upon criteria relating to volume of traffic, safety considerations, growth potential, readiness to obligate funds, and local taxing capacity; provided, however, that municipal projects located in municipalities for which the moderate income housing obligation is increased pursuant to a workforce housing transfer agreement, as set forth in section 12 of P.L.1985, c.222 (C.52:27D-312), shall also receive priority for funding. In addition to the above criteria used in determining priority of funding of municipal projects in each county, the commissioner shall consider whether a project is intended to remedy hazardous conditions as identified for the purposes of providing transportation pursuant to N.J.S.18A:39-1.2 for school pupils or to improve pedestrian safety.

For the purposes of this subsection, (1) "population" means the official population count as reported by the New Jersey Department of Labor and Workforce Development; and (2) "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the department.

d. There shall be appropriated at least $175,000,000 for each fiscal year commencing July 1, 2006 through the fiscal year commencing July 1, 2015, and $400,000,000 for each fiscal year commencing July 1, 2016 and for each fiscal year thereafter, for the purposes provided herein and in subsections b., c., e., f., and g. of this section. (1) Of that appropriation, the commissioner shall allocate 37.5 percent of the total appropriation as State aid for municipalities pursuant to the provisions of subsection c. of this section, provided that $5,000,000 for each fiscal year commencing July 1, 2006 through the fiscal year commencing July 1, 2015, and $10,000,000 for each fiscal year commencing July 1, 2016 and for each fiscal year thereafter of the amount allocated as State aid for municipalities shall be set aside and sub-allocated as State aid to any municipality qualifying for aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.). The commissioner shall allocate the aid to each municipality in the same proportion that the municipality receives aid under P.L.1978, c.14 (C.52:27D-178 et seq.). (2) The commissioner shall allocate 37.5 percent of the total appropriation pursuant to the provisions of subsection e. of this section for the Local County Aid Program. (3) The commissioner shall allocate seven percent of the total appropriation pursuant to the provisions of subsection b. of this section for the "Local Aid Infrastructure Fund." (4) The commissioner shall allocate seven percent of the appropriation pursuant to the provisions of subsection f. of this section for the "Local Freight Impact Fund." (5) The remaining 11 percent of the appropriation shall be allocated pursuant to the provisions of subsection g. of this section for the "Local Bridges Fund."

e. The commissioner may, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law, allocate additional funding to the Local County Aid Program for public highway projects, in accordance with a formula similar to that provided for in subsection c. of this section, except that Cm equals road mileage under county jurisdiction and Sm equals total county road mileage within the State.

f. The commissioner shall, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law, allocate at the commissioner's discretion, State aid to counties and municipalities for transportation projects that address the impacts of freight travel in local communities and on local transportation infrastructure, except that the amount to be appropriated for this program shall be seven percent of the total amount appropriated pursuant to subsection d. of this section. This State aid shall be set aside prior to any formula allocations provided for in subsections c., d., e., and g. of this section, and shall be known as the "Local Freight Impact Fund."

g. The commissioner shall, pursuant to appropriations or authorizations being made from time to time by the Legislature according to law, allocate at the commissioner's discretion, State aid to counties and municipalities for transportation projects that address the condition of bridges under the jurisdiction of counties with an emphasis on repair and reconstruction of those with the greatest structural deficiencies, except that the amount to be appropriated for this program shall be 11 percent of the total amount appropriated pursuant to subsection d. of this section. This State aid shall be set aside prior to any formula allocations provided for in subsections c., d., e., and f. of this section, and shall be known as the "Local Bridges Fund."

(cf: P.L.2016, c.56, s.9)

16. N.J.S.40A:2-3 is amended to read as follows:

40A:2-3. Any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing:

a. any capital improvement or property which it may lawfully make or acquire;

b. any purpose for which it is authorized or required by law to make an appropriation, except current expenses, as may be defined by rule and regulation of the Local Finance Board, and payment of obligations (other than those for temporary financing); or

c. the amount of any contribution by a local unit that is a sending municipality under a regional contribution or workforce housing transfer agreement pursuant to section 12 of P.L.1985, c.222 (C.52:27D-312).

No local unit shall borrow money or issue its obligations for purposes authorized under this chapter except as provided in this chapter.

(cf: P.L.2007, c.62, s.16)

17. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

3. In the preparation of its budget a municipality shall limit any increase in said budget to 2.5% or the cost-of-living adjustment, whichever is less, over the previous year's final appropriations subject to the following exceptions:

a. (Deleted by amendment, P.L.1990, c.89.)

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;

d. All debt service, including that of a Type I school district;

e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;

f. Amounts reserved for uncollected taxes;

g. (Deleted by amendment, P.L.1990, c.89.)

h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;

i. Any amount approved by any referendum;

j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a constituent municipality to the intermunicipal account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 of P.L.1992, c.89 (C.40:48-2.5b);

k. (Deleted by amendment, P.L.1987, c.74.)

l. Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;

m. (Deleted by amendment, P.L.1987, c.74.)

n. (Deleted by amendment, P.L.1987, c.74.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. (Deleted by amendment, P.L.1987, c.74.)

q. (Deleted by amendment, P.L.1990, c.89.)

r. Amounts expended to fund a free public library established pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;

s. (Deleted by amendment, P.L.1990, c.89.)

t. Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received by a municipality under a regional contribution or workforce housing transfer agreement pursuant to section 12 of **[**that act**]** P.L.1985, c.222 (C.52:27D-312);

u. (Deleted by amendment, P.L.2004, c.74.)

v. (Deleted by amendment, P.L.1990, c.89.)

w. (Deleted by amendment, P.L.2004, c.74.)

x. Amounts expended to aid privately owned libraries and reading rooms, pursuant to R.S.40:54-35;

y. (Deleted by amendment, P.L.1990, c.89.)

z. (Deleted by amendment, P.L.1990, c.89.)

aa. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

bb. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

cc. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

dd. Expenditures of amounts actually realized in the local budget year from the sale of municipal assets in extraordinary cases and with the permission of the Local Finance Board;

ee. Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 (C.52:27D-118.26), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et seq.), may appropriate and expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:

1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;

2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;

3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;

4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and

5) the impact of utilization of surplus upon succeeding budgets of the local unit;

ff. Newly authorized operating appropriations for the municipal court or violation's bureau when approved by the vicinage Presiding Judge of the Municipal Court after consultation with the mayor and governing body of the municipality;

gg. (Deleted by amendment, P.L.2004, c.74.)

hh. (Deleted by amendment, P.L.2004, c.74.)

ii. Subject to the approval of the Local Finance Board, expenditures related to the cost of conducting and implementing a total property tax levy sale pursuant to section 16 of P.L.1997, c.99 (C.54:5-113.5);

jj. Amounts expended for a length of service award program pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);

kk. Amounts expended to provide municipal services or reimbursement amounts to multifamily dwellings for the collection and disposal of solid waste generated by the residents of the multifamily dwellings. This subsection shall cease to be operative at the end of the first local budget year in which the municipality has fully phased in its reimbursement amount expenses;

ll. Amounts expended by a municipality under an interlocal services agreement entered into pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et al.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of the municipality that will receive the service may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

mm. Amounts expended under a joint contract pursuant to the "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et seq.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of each participating municipality may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

nn. (Deleted by amendment, P.L.2004, c.74.)

oo. Amounts appropriated in the first three years after the effective date of P.L.2003, c.92 (C.18A:7F-5b et al.) for liability insurance, workers' compensation insurance and employee group insurance;

pp. Amounts appropriated in the first three years after the effective date of P.L.2003, c.92 (C.18A:7F-5b et al.) for costs of domestic security preparedness and responses to incidents and threats to domestic security;

qq. Amounts required to be paid by a municipality pursuant to the provisions of section 4 of P.L.2007, c.311 (C.13:1E-96.5).

In the first full year when an existing appropriation or expenditure that is subject to budget limitations is made an exception to budget limitations, a municipality shall deduct from its final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2), the amount which the municipality expended for that purpose during the last full budget year, or portion thereof, in which the purpose so excepted was funded from appropriations in the municipal budget.

In the first full year when an existing appropriation or expenditure that is not subject to budget limitations is made subject to budget limitations, a municipality shall add to its final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2), the amount which the municipality expended for that purpose during the last full budget year, or portion thereof, in which the purpose so excepted was funded from appropriations in the municipal budget.

(cf: P.L.2007, c.311, s.17)

18. This act shall take effect on the first day of the sixth month next following enactment.

STATEMENT

The affordable housing needs of the State should be satisfied in an equitable manner throughout all municipalities, regardless of demographic profile. For many municipalities, the satisfaction of existing fair share affordable housing obligations could potentially result in significant challenges to local population, infrastructure, and school resources. This bill is meant to ensure that affordable housing is provided throughout the State in an equitable manner, while enhancing the choices municipalities have in determining how to provide it.

This bill amends the "Fair Housing Act," ("FHA") P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the use of workforce housing transfer agreements (“WHTAs”) with respect to moderate income housing obligations. The bill also establishes certain funding priorities for municipalities that accept additional moderate income housing obligations pursuant to a WHTA.

This bill would authorize municipalities to enter into WHTAs, which allow a municipality to transfer some or all of the moderate income portion of its affordable housing obligation, up to 50 percent of its total affordable housing obligation. As a result, the bill maintains the prohibition on agreements to transfer a municipality’s low income housing obligation.

Under the “Uniform Housing Affordability Controls,” a development’s “affordability average” is defined as an average of the percentage of county median income, at which a development’s price-restricted units are affordable to low and moderate income households (N.J.A.C.5:80-26.2). For example, if the rents for the five price-restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of county median income, respectively, the affordability average for those units would equal 50 percent. The bill codifies this definition in the FHA. The bill also defines “moderate income housing share” as the percentage of all price-restricted housing units in new developments in a municipality that are permitted to be moderate income units, as opposed to low-income units.

The bill provides that a WHTA would increase or decrease, as applicable, the moderate income housing obligations of participating municipalities in proportion to the number of units transferred in the agreement. The affordability average of participating municipalities also would be adjusted to a lower or higher percentage of county median income, as applicable, in proportion to the number of moderate income units transferred.

Additionally, the bill provides that a workforce housing transfer agreement may only be approved if the sending municipality provides the receiving municipality funds in an amount not less than the amount of funds necessary to defray the costs of construction associated with fulfilling the moderate income housing obligations, transferred pursuant to the agreement, if the construction occurred within the sending municipality.

Under the bill, a receiving municipality may satisfy its increased moderate income housing obligation through the provision of “workforce housing.” Workforce housing is defined as housing that (1) is affordable to households making between 80 and 120 percent of the regional median income, and (2) may be reserved for households having at least one member who works or resides in the municipality upon submittal of the application for workforce housing.

Additionally, the bill requires the Council on Affordable Housing ("COAH") to review a proposed WHTA to certify that it contains sufficient safeguards to ensure that contributions to the receiving municipality are applied for purposes consistent with the agreement and the FHA. The bill directs DCA to adopt rules and regulations setting forth the applicable safeguards.

This bill also allows municipalities which are located in different housing regions to enter into a WHTA. Further, the bill prohibits a municipality from avoiding development resulting from a builders’ remedy lawsuit through the use of a WHTA.

In addition, the bill establishes the following funding priorities for municipalities that accept additional moderate income housing obligations pursuant to a WHTA:

(1) DCA is required to establish a funding priority for housing projects located in receiving municipalities when expending certain funds (i.e., realty transfer fee receipts) from the “New Jersey Affordable Housing Trust Fund”;

(2) The Housing and Mortgage Finance Agency is required to give preference to affordable housing programs situated in receiving municipalities when awarding funding;

(3) The State debt service aid provided to support approved school facility projects is required to be increased by not less than 10 percent and not more than 30 percent for school districts containing a receiving municipality, except that the district aid percentage may not exceed 90 percent; and

(4) The Department of Transportation is required to provide a funding priority to receiving municipalities when awarding monies through the department’s discretionary local aid program.

The bill also requires the Department of Environmental Protection to expedite, to the extent possible, the review of any permit or approval within its authority that is submitted in conjunction with a proposal to develop affordable housing in a receiving municipality.

Given that the construction of housing often places increased pressure on a municipality’s existing infrastructure, including school facility and highway capacities, it is the intent of the sponsor to provide receiving municipalities with the resources necessary to fully accommodate the voluntary influx of affordable housing.