ASSEMBLY, No. 2017



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman N.Munoz

SYNOPSIS

Reforms procedures concerning provision of affordable housing; repeals “Statewide Non-Residential Development Fee Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning affordable housing and amending, supplementing, and repealing various parts of the statutory law.

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

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 is abolished, and all of its powers, functions, and duties that are not repealed by P.L. , c. (C. ) (pending before the Legislature as this bill) are continued in the Department of Community Affairs established pursuant to section 1 of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

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

2. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to read as follows:

3.1. "Days" means calendar days.

"Density" means the permitted number of dwelling units per gross area of land that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance or on the date of the adoption of the ordinance authorizing noncontiguous cluster, and in accordance with recognized environmental constraints.

"Development regulation" means a zoning ordinance, subdivision ordinance, site plan ordinance, official map ordinance or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

"Development restriction" means an agricultural restriction, a conservation restriction, or a historic preservation restriction.

"Development transfer" or "development potential transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance.

"Development transfer bank" means a development transfer bank established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158) or the State TDR Bank.

"Drainage" means the removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding.

"Environmental commission" means a municipal advisory body created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

"Final approval" means the official action of the planning board taken on a preliminarily approved major subdivision or site plan, after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

"Floor area ratio" means the sum of the area of all floors of buildings or structures compared to the total area of land that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

"General development plan" means a comprehensive plan for the development of a planned development, as provided in section 4 of P.L.1987, c.129 (C.40:55D-45.2).

"Governing body" means the chief legislative body of the municipality. In municipalities having a board of public works, "governing body" means such board.

"Historic district" means one or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

"Historic preservation restriction" means a "historic preservation restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

"Historic site" means any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance.

"Inherently beneficial use" means a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to **[**,**]** :

(1) a hospital, school, child care center, or group home **[**, or**]** ;

(2) a wind, solar or photovoltaic energy facility or structure; or

(3) a residential development project, proposed pursuant to section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill) in a municipality not determined to be inclusionary, in which at least 10 percent of the dwelling units are set aside for low- or moderate-income households.

"Instrument" means the easement, credit, or other deed restriction used to record a development transfer.

"Interested party" means: (a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use, acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et seq.), or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under P.L.1975, c.291 (C.40:55D-1 et seq.).

"Land" includes improvements and fixtures on, above or below the surface.

"Local utility" means any sewerage authority created pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.); any utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any utility, authority, commission, special district or other corporate entity not regulated by the Board of Regulatory Commissioners under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water or sewer service to a municipality or the residents thereof.

"Lot" means a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit.

(cf: P.L.2013, c.106, s.3)

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Assume the duties of the Council on Affordable Housing that are not repealed by section 25 of P.L. , c. (C. ) (pending before the Legislature as this bill) and that are transferred to the department pursuant to sections 1 and 14 of P.L. , c.    (C.      ).

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

4. 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**]** by section 5 of P.L.1985, c.222 (C.52:27D-305; repealed by section 25 of P.L. ,c. (pending before Legislature as this bill) and , pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), the Department of Community Affairs.

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% 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.

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.)**]**. Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

f. "Inclusionary development" means a market rate residential housing development **[**in which a substantial percentage of the housing units are provided for a reasonable income range of**]** that includes units set-aside as housing affordable to 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.).**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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. "Price restricted unit" means a residential dwelling unit that is price restricted, including: units that are deed restricted for occupancy by residents of low or moderate income; price restricted pursuant to covenants established for units financed by federal Low Income Housing Tax Credits; price restricted pursuant to covenants established for units developed pursuant to the "Neighborhood Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-490 et seq.); units rehabilitated as either a sending or receiving municipality under a regional contribution agreement, and subject to price controls; units built or rehabilitated as part of a Community Development Block Grant, and subject to price controls; housing units operated by a public housing authority; units constructed, rehabilitated, or receiving project-based assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. s.1437f); or units constructed, in whole or in part, with other governmental funding sources.

o. "Developable land" means undeveloped property with sufficient sewer capacity, having a slope of less than 15 percent, that is not property owned by a municipality or county and designated by resolution or ordinance as preserved open space, or as recreation, conservation, farmland or historic preservation lands, pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.), and located where development is not prohibited pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water Protection and Planning Act," P.L.2004, c.120, (C.13:20-1 et al.), the Federal Clean Water Act, (33 U.S.C. ss.1251 through 1376), the "Hackensack Meadowlands Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et seq.), or any other development restriction designated by the Commissioner of Community Affairs.

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

q. "Special needs unit" means, at a minimum, a bedroom contained within a unit of special needs housing for one or more occupants that contains a bed for each occupant and access to a bathroom.

r. "Inclusionary municipality" means a municipality deemed, pursuant to sections 15 and 16 of P.L. , c. (C. ) (pending before the Legislature as this bill), to have provided or planned for a variety and choice of housing as evidenced by the quantity of price-restricted units or amount of other units, the characteristics of which demonstrate an opportunity for low or moderate income housing.

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

t. "Small residential development project" means new construction resulting in the production of fewer than five residential dwelling units, whether attached or detached, and shall not mean any construction or reconstruction of: (1) a single-family dwelling that is occupied, or intended to be occupied, by the owner; or (2) a two-family dwelling, in which one unit is occupied, or intended to be occupied, by the owner.

u. "Single-family attached housing" means two or more dwelling units sharing a wall that extends from ground to roof with an adjoining unit, with no other units above or below, with separate major utility systems and metering.

v. "Sufficient sewer capacity" means the ability to treat and dispose of all sewage generated from a site by means of public or private, off-site or on-site facilities that are consistent with the area-wide water quality management plan, including the wastewater management plan, or with an amendment to the area-wide water quality management plan submitted to and under review by the Department of Environmental Protection, as applicable.

w. "Luxury dwelling" means a residential housing unit that, according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, is affordable to, and occupied or intended for occupancy by, households with a gross household income equal to or greater than 150 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

x. "Elder cottage housing opportunity unit" means a modular, self-contained unit, restricted to individuals aged 55 years or older or people with disabilities, or both, and erected on a site containing an existing dwelling.

y. "Prospective residential growth" means all housing units that are issued certificates of occupancy after the effective date of P.L.    , c.    (C.   ) (pending before the Legislature as this bill). This term does not include units in a development that has been granted preliminary final approval prior to the effective date of P.L.    , c.    (C.        ) (pending before the Legislature as this bill). To the extent that a municipality has no net growth in the total number of housing units, this term does not include units that only replace existing housing units.

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

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

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

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

"Commissioner" means the Commissioner of Community Affairs.

"Council" means the Council on Affordable Housing created by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and, pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), the Department of Community Affairs.

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the **[**Council on Affordable Housing**]** Department of Community Affairs pursuant to subsection a. of section **[**7 of P.L.1985, c.222 (C.52:27D-307)**]** 14 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

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

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

(2) Desirability. Each project shall be evaluated with relation to its probable effect in meeting the affordable housing needs of the housing region in which it is to be located, in accordance with the standards and criteria of the **[**council**]** department. Consideration shall be given to (a) the number of affordable dwelling units that the project would provide, (b) the proportion of affordable units to the total number of units envisaged in the project plan, (c) the distribution of those affordable units as between those affordable to persons and families of low income and those of moderate income, considered in relation to the needs of the housing region, (d) appropriateness of the proposed tenure of the affordable units, whether to be rental or owner-occupied, in relation to the needs of the housing region, and (e) appropriateness of the proposed distribution of units as to family size, in relation to the needs of the housing region.

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

b. In developing the system of assigning and designating priorities, and in evaluating individual projects for such assignment and designation in the register, the commissioner shall consult with the executive director of the agency **[**and the executive director of the council**]**. The **[**council**]** person having control over the project and the agency shall promptly and fully supply the commissioner with all relevant information necessary for the commissioner's timely and complete fulfillment of the requirements of **[**this act**]** P.L.1991, c.479 (C.52:27D-307.1 et seq.).

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

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

4. a. Any officer or employee of the department, including any member, officer or employee of the agency **[**or the council**]**, who receives from any person any solicitation, application, proposal or communication of any kind, whether oral or in writing, aimed at furthering the assistance of any project shall promptly report the same to the commissioner. The report shall identify the person or persons making such communication. If any such person is not identified in the register in accordance with the requirements of subsection b. of section 2 of **[**this act**]** P.L.1991, c.479 (C.52:27D-307.2), the report shall state the person's relationship to the sponsor or developer of the project and the capacity in which the person represents himself or herself to be acting on behalf of the sponsor or developer; or if the person fails or refuses to supply that information, the report shall so state.

b. The commissioner shall develop a procedure or procedures by which reports required under subsection a. of this section shall be made either to the commissioner directly or through such administrative channels as the commissioner shall devise and direct. Notwithstanding the provisions of subsection i. of section 4 of P.L.1983, c.530 (C.55:14K-4) **[**and subsection a. of section 5 of P.L.1985, c.222 (C.52:27D-305)**]**, the regulations adopted by the commissioner in fulfillment of this subsection shall be of full force and application on and within the agency **[**and the council**]**; and all members, officers and employees of the agency **[**and council**]** shall give full compliance with and obedience to the rules and orders of the commissioner made in pursuance of his duties and responsibilities under **[**this act**]** P.L.1991, c.479 (C.52:27D-307.1 et seq.).

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

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

8. 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).**]** (Deleted by amendment, P.L.    , c.    ) (pending before the Legislature as this bill)

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

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

d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in P.L.   , c.    (C. ) (pending before the Legislature as this bill) shall require a municipality to raise or expend municipal revenues in order to provide 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.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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.

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

9. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to read as follows:

1. Beginning upon the effective date of P.L.2005, c.350 (C.52:27D-311a et al.), and in order to be considered a price restricted unit for purposes of a determination pursuant to subsection a. of section 16 of P.L. , c. (C. ) (pending before the Legislature as this bill), any new construction **[**for which credit is sought against a fair share obligation**]** shall be adaptable in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15). For the purposes of P.L.2005, c.350 (C.52:27D-311a et al.), "new construction" shall mean an entirely new improvement not previously occupied or used for any purpose.

(cf: P.L.2005, c.350, s.1)

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

6. The **[**council**]** department may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a **[**et al.**]**) and subsection a. of section 18 of P.L. , c. (C. ) (pending before the Legislature as this bill) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). **[**If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), the council may require the municipality to amend its fair share plan within 90 days of receiving notice from the council, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of receiving such notice, the council may revoke substantive certification.**]**

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

11. 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." Not less than 13 percent of the total expenditures in any State fiscal year from the New Jersey Affordable Housing Trust Funds shall be used for housing projects and programs reserved for very low income households. 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.) or P.L. , c. (C.. ) (pending before the Legislature as this bill).

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 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.**]** The commissioner shall prioritize funding for projects that include special needs units when making grants and awards from the “New Jersey Affordable Housing Trust Fund.”

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 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 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)

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

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

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

(2) The commissioner shall target the award of any grant or loan to municipalities based on the extent that their housing plan relied on housing projects or programs funded in part or in whole by municipal development trust fund revenues.

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

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

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

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least **[**20**]** 10 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the **[**council**]** department, unless the municipality in which the property is located has received **[**substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given**]** a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan or the municipality has received substantive certification from the council or has petitioned for substantive certification prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) and such petition has not been dismissed or otherwise determined to be invalid. A municipality may satisfy the set-aside requirements imposed by this subsection through any combination of the alternate means provided for in section 18 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

d. Notwithstanding the provisions of subsection b. of this section, or any other law or regulation to the contrary, for purposes of mixed use projects or qualified residential projects in which a business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to **[**20**]** 10 percent of the total, required to be reserved for occupancy by low or moderate income households. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(cf: P.L.2011, c.89, s.5)

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

(1) Determine the housing regions of the State, for the use and information of municipalities;

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

(3) Pursuant to subsection a. of section 16 of P.L. , c. (C.      ) (pending before the Legislature as this bill), make a determination of whether a municipality is an inclusionary municipality;

(4) Establish guidelines or model language for covenants or other devices to maintain the affordability of inclusionary units developed pursuant to sections 17 and 18 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(5) Establish affirmative marketing requirements for those inclusionary units developed pursuant to section 18 of P.L. , c.    (C.       ) (pending before the Legislature as this bill); and

(6) Review and grant approval or disapprove any petition for substantive certification filed prior to the effective date of P.L. , c.    (C.      ) (pending before the Legislature as this bill). The department shall apply the regulations of the Council on Affordable Housing set forth in N.J.A.C.5:92 and N.J.A.C.5:93, and such provisions set forth in N.J.A.C.5:96 and N.J.A.C.5:97 as have been upheld by the Supreme Court, or may adopt new regulations, or revisions or amendments to the existing regulations, concerning petitions for substantive certification. The department shall conduct an interim review of the housing plan of any municipality granted substantive certification. This paragraph shall not be construed to impair a municipality’s ability to withdraw a petition for substantive certification, at any time, and apply instead for a determination of inclusionary status pursuant to section 15 of P.L.    , c. (C. ) (pending before the Legislature as this bill).

(7) Promulgate guidelines for development fees in lieu of construction of fractional dwelling units.

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

15. (New section) a. Following the effective date of P.L. , c.    (C.      ) (pending before the Legislature as this bill), a municipality may apply to the Department of Community Affairs for a determination of whether the municipality is an inclusionary municipality that shall be deemed to have provided for its portion of the region's opportunity for low and moderate income housing.

b. (1) A municipality that has not met the criteria in section 16 of P.L. , c. (C. ) (pending before the Legislature as this bill) may reapply to the department at any time during the 10-year planning cycle, based upon additional evidence that those criteria have been satisfied.

16. (New section) a. The Department of Community Affairs shall determine that a municipality is an inclusionary municipality if:

(1) at least seven and one-half percent of the total present occupied housing stock within the municipality is comprised of price restricted units;

(2) at least 33 percent of the occupied housing stock within the municipality is comprised of the following types of housing:

(a) single-family attached housing as defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-304);

(b) mobile homes located in a mobile home park as defined in subsection d. of section 3 of P.L.1983, c.386 (C.40:55D-102);

(c) multiple dwellings as defined pursuant to subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3); and

(d) other housing units that are affordable to low-and moderate-income households; or

(3) the municipal zoning ordinance and master plan housing element contain:

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

(b) a plan pertaining to how the municipality will satisfy the obligation pursuant to section 17 of P.L. , c. (C. ) (pending before the Legislature as this bill), which may incorporate alternate approaches pursuant to section 18 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(c) an inventory of the municipality's existing low and moderate income housing stock; and

(d) a plan providing for any municipal action, including rehabilitation, necessary to address the needs of a municipality's low- and moderate-income households residing in dilapidated or unsuitable housing.

b. (1) In making a determination regarding a municipality’s inclusionary status pursuant to subsection a. of this section, the department shall allow a housing unit to qualify for additional credit if the unit satisfies one of the following criteria:

(a) twice as much weight as its actual proportion to a municipality's total housing stock if the unit qualifies as a special needs housing unit, and has been newly constructed following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill);

(b) 1.5 times as much weight as its actual proportion to a municipality's total housing stock if the unit is price restricted, and the department finds that the unit or the price restriction on the unit, or both, were established prior to the effective date of P.L. , c.    (C.   ) (pending before the Legislature as this bill) in order to address the municipality’s affordable housing obligation; or

(c) twice as much weight as its actual proportion to a municipality's total housing stock if a price restriction on the unit makes it qualify as very low income housing.

(2) In making a determination regarding a municipality’s inclusionary status pursuant to paragraph (2) of subsection a. of this section, the department shall give a price restricted unit 1.5 times as much weight as its actual proportion to a municipality's total housing stock, regardless of whether the department finds that the unit or the price restriction on the unit, or both, were established prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) in order to address the municipality’s affordable housing obligation. Such additional credit may only be applied as an alternative to any additional credit applied under paragraph (1) of this subsection. The department may exclude units determined to be luxury dwellings from inclusionary status determinations pursuant to paragraph (2) of subsection a. of this section.

(3) Upon filing a zoning ordinance and master plan housing element with the department pursuant to paragraph (3) of subsection a. of this section, the filing shall be deemed to satisfy the criteria in this section. In the event of a challenge to this filing, the Commissioner of Community Affairs will undertake a limited review of the municipality's filing, for the sole purpose of determining whether the filing meets the criteria of paragraph (3) of subsection a. of this section.

c. For a unit constructed following the effective date of P.L.2005, c.350 (C.52:27D-311a et al.) to be considered price restricted for purposes of a determination pursuant to this section, the unit shall be adaptable as described in section 5 of P.L.2005, c.350 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-311a).

d. A municipality that received substantive certification under N.J.A.C.5:96 and N.J.A.C.5:97, being the rules of the Council on Affordable Housing for the period beginning June 2, 2008, or that has been granted a judgment of repose or a judgment of compliance prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be considered an inclusionary municipality pursuant to this section until the end of its approved certification period; provided that the municipality continues to fully and faithfully implement the provisions of its fair share plan.

e. The department shall determine whether a municipality is an inclusionary municipality within 90 days of the receipt of an application. A determination of whether a municipality is inclusionary pursuant to paragraph (1) or (2) of subsection a. of this section shall be based upon a municipality's existing housing stock. Units transferred through a regional contribution agreement shall be fully credited to the sending municipality for purposes of determining whether a municipality is an inclusionary municipality.

f. A determination by the department pursuant to this section shall be deemed a final agency action appealable to the Appellate Division of the Superior Court.

17. (New section) a. (1) For any new residential development project, as defined in subsection s. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a residential development project that would qualify as a residential development project if it were new construction, a municipality that is addressing affordable housing obligations pursuant to paragraph (3) of subsection a. of section 16 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall require by ordinance that at least one out of every 10 residential housing units proposed as part of that project be reserved for occupancy as low or moderate income housing.

(2) For any new small residential development project, as defined in subsection t. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a development project that would qualify as a residential or small residential development project if it was new construction, a municipality may require the developer to pay a development fee in lieu of reserving units for low and moderate income households. Each amount collected shall be deposited into the municipal affordable housing trust fund, and accounted for separately from all other funding held by the municipality, or into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Nothing in this paragraph shall be construed to require the developer of a small residential development project to pay a development fee when the developer is providing for the on-site or off-site construction of affordable units.

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

c. If a zoning board of adjustment determines that an inclusionary development is not economically viable, then the zoning board of adjustment may require the developer to provide the affordable units utilizing one or more of the alternate methods authorized pursuant to section 18 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

e. At least 50 percent of the units reserved for low or moderate income housing pursuant to this section shall be reserved for low income housing. If an odd number of affordable units is being constructed, rehabilitated, or developed pursuant to this section, the municipality may determine the reservation-use of the odd unit. If a residential development project results in a fractional unit reserved for occupancy by low-income or moderate-income households, then the developer shall collect a development fee, and deposit the fee into the municipal affordable housing trust fund, to be accounted for separately from all other funding held by the municipality, or into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

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

g. A municipality that has received Third Round substantive certification from the Council on Affordable Housing or the Department of Community Affairs, or has been granted a judgment of repose or a judgment of compliance prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be exempt from the requirements of this section for the duration of the housing round for which the municipality is certified, unless the department determines that the municipality’s Third Round housing element and fair share plan does not provide for a realistic opportunity for the municipality to achieve its fair share of low and moderate income housing.

h. A municipality that has petitioned for Third Round substantive certification prior to the effective date of P.L. , c.    (C.       ) (pending before the Legislature as this bill), but whose petition was never finally determined by the Council on Affordable Housing or the department, may withdraw its petition for substantive certification or act to withdraw its certification and elect to comply with the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill) by satisfying the requirements of this section. This section shall not be construed to apply to a municipality whose petition for substantive certification is dismissed or otherwise determined to be invalid.

18. (New section) a. A municipality may authorize the following alternate means to satisfy the set-aside requirements imposed by section 17 of P.L. , c. (C. ) (pending before the Legislature as this bill):

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

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

(3) In accordance with subsection c. of this section, permitting a developer to pay a development fee into the municipal affordable housing trust fund, or into the “New Jersey Affordable Housing Trust Fund,” established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) to address affordable housing needs;

(4) Requiring a developer to construct or contribute to the construction of a 100 percent affordable development;

(5) Permitting construction of elder cottage housing opportunity units;

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

(7) Permitting the purchase and subsidization of units that are subsequently sold or rented to low- and moderate-income households at affordable sale prices or rents;

(8) Requiring a developer to construct or contribute to the construction of an assisted living residence in which all or a designated number of units are restricted to low- or moderate-income households;

(9) Permitting the construction of off-site special needs housing;

(10) Allowing very low income housing and special needs housing units to apply twice as much weight against a set-aside requirement as other affordable units, regardless of whether constructed on- or off-site; and

(11) Other innovative means to provide for a variety and choice of housing opportunities for low and moderate income residents, so long as the municipality is able to demonstrate a source of funding for any such alternative approach.

b. Any person engaging in a residential development project shall file an application to the zoning board of adjustment for approval of alternate means of satisfying the set-aside requirements imposed by section 17 of P.L. , c. (C. ) (pending before the Legislature as this bill). In the case of an application, the board of adjustment shall limit its determination to approving and determining which, and to what extent alternate means may be employed, and shall include the reasons for its determination in the findings of its decision thereon.

c. For the purposes of paragraph (3) of subsection a. of this section, a development fee may substitute for one or more units of affordable housing, so long as the amount of the fee per substituted unit equates to the average cost of providing one tenant-based State rental assistance subsidy, pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.), multiplied by 20, in the municipality’s housing region, in accordance with the council’s rules and regulations.

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

19. (New section) A municipality may provide a preference for occupancy of up to one-half of the units required to be provided pursuant to section 17 of P.L. , c. (C. ) (pending before the Legislature as this bill), to those households that have at least one member who works in the municipality.

20. (New section) a. After the expiration of 365 days from the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), in any municipality not determined to be an inclusionary municipality by the Department of Community Affairs as described in section 16 of P.L. , c. (C. ) (pending before the Legislature as this bill), when a proposed residential development project in which at least 10 percent of the dwelling units are set aside for low or moderate-income households requires approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) of a subdivision, site plan, conditional use, or a variance, including a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), the local land use board shall, pursuant to section 47 of P.L.1975, c.291 (C.40:55D-60), or section 57 of P.L.1975, c.291 (C.40:55D-70), as the case may be, review the request for a subdivision, site plan, conditional use, or a variance, and the proposed residential development project shall be deemed to be an inherently beneficial use, and the developer shall be required to make only a showing that the variance or other relief requested can be granted without substantial detriment to the public good.

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

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

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

b. Notwithstanding subsection a. of this section, a municipality shall not alter the zoning classification of any inclusionary development site, or take any action to remove affordability controls on existing affordable units, until the end of the applicable control period.

c. Subsection b. of this section shall not apply to any property that is the subject of pending exclusionary litigation that has not reached final judgment through and including all appeals, including an appeal to the Supreme Court of New Jersey prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

25. a. The following sections are repealed:

Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7);

Section 39 of P.L.2009, c.90 (C.40:55D-8.8);

Sections 5 and 6 of P.L.1985 c.222 (C.52:27D-305) and (C.52:27D-306);

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

Sections 8 through 9 of P.L.1985, c.222 (C.52:27D-308) through (C.52:27D-309);

Sections 1 and 2 of P.L.1995, c.231 (C.52:27D-310.1) and (C.52:27D-310.2);

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

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

Section 2 of P.L.1989, c.142 (C.52:27D-313.1);

Sections 14 through 19 of P.L.1985, c.222 (C.52:27D-314) through (C.52:27D-319);

Sections 7 through 9 of P.L.2008, c.46 (C.52:27D-329.1) through (C.52:27D-329.3);

Section 10 of P.L.2008, c.46 (C.52:27D-329.4);

Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and

Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

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

26. This act shall take effect immediately, except that sections 1 and subsection b. of section 25 shall be inoperative until the first day of the seventh month next following enactment.

STATEMENT

The bill reforms the State's affordable housing laws, and simplifies the mechanisms for determining compliance with the "Fair Housing Act," ("FHA") P.L.1985, c.222 (C.52:27D-301 et al.). This legislation codifies the dissolution of the Council on Affordable Housing ("COAH"), established pursuant to the FHA, and transfers responsibility for FHA administration to the Department of Community Affairs ("DCA"). The bill advances the conclusion of the 2010 Housing Opportunity Task Force that simply requiring 10 percent of prospective residential growth to be affordable would be more effective in producing affordable units than the more complex current system. The bill also repeals the “Statewide Non-Residential Development Fee Act,” enacted as sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

The bill directs municipalities to apply to DCA to determine inclusionary status. The bill directs DCA to designate municipalities as inclusionary if:

1. at least 7.5 percent of its total present housing stock is price-restricted;
2. at least one-third of its housing stock can be categorized as either single-family attached, mobile homes, multiple dwellings, or other housing units that are affordable to low and moderate income households; or
3. the municipality adopts zoning ordinances or incorporates new standards into its master plan that contain an analysis of existing housing stock, and an affordable housing plan, consisting of 10 percent set-aside requirements for certain new residential developments, or alternative requirements.

For municipalities that choose to address their affordable housing obligation through a 10 percent set-aside requirement, the bill enables those municipalities to address that obligation through alternate means, consisting of:

1. permitting inclusionary units to be newly constructed off-site;
2. permitting the required inclusionary units to be provided off-site by rehabilitation of existing substandard units;
3. permitting a developer to pay a fee into the municipal or State affordable housing trust fund, equating to the current average cost of providing one tenant-based State rental assistance subsidy in the same housing region, multiplied by twenty years, in lieu of each inclusionary unit that would otherwise be required;
4. requiring a developer to construct or contribute to the construction of a 100 percent affordable development;
5. permitting construction of elder cottage housing opportunity units;
6. permitting the construction of off-site accessory apartment units affordable to low- and moderate-income households;
7. permitting the purchase and subsidization of units that are subsequently sold or rented to low- and moderate-income households at affordable sale prices or rents;
8. requiring a developer to construct or contribute to the construction of an assisted living residence in which all or a designated number of units are restricted to low- or moderate-income households;
9. permitting the construction of off-site special needs housing;
10. allowing very low income housing and special needs housing units to apply twice as much weight against a set-aside requirement as other affordable units; and
11. other innovative means to provide for a variety and choice of housing opportunities for low and moderate income residents, so long as the municipality is able to demonstrate a source of funding.

In municipalities that have not obtained inclusionary status, proposed developments that satisfy the 10 percent set-aside requirement may be deemed inherently beneficial for the purposes of obtaining a zoning variance.

Under the bill, municipalities that received substantive certification or the equivalent under prior COAH rules will be considered inclusionary until the end of their approved certification periods. The bill also permits units already transferred through regional contribution agreements ("RCAs") to be credited to the sending municipality for the purposes of determining inclusionary status.

Finally, this bill repeals the “Statewide Non-Residential Development Fee Act”. This fee has been charged by all municipalities for non-residential construction or improvements, at a rate of two and one-half percent of the equalized assessed value of land and improvements for all new non-residential construction on unimproved lots. The fee also has been charged at a rate of two and one-half percent of the increase in equalized assessed value for additions to existing structures to be used for non-residential purposes.