

SENATE, No. 4251

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 21, 2023

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning affordable housing, including administration and
2 municipal obligations, amending, supplementing, and repealing
3 various parts of the statutory law, and making an appropriation.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

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

10 2. The Legislature finds that:

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

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

26 c. The interest of all citizens, including **【low and moderate**
27 **income】** low- and moderate-income families in need of affordable
28 housing, and the needs of the workforce, would be best served by a
29 comprehensive planning and implementation response to this
30 constitutional obligation.

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

40 e. The State can maximize the number of **【low and moderate**
41 **income】** low- and moderate-income units provided in New Jersey by
42 allowing its municipalities to adopt appropriate phasing schedules for
43 meeting their fair share, so long as the municipalities permit a timely
44 achievement of an appropriate fair share of the regional need for **【low**
45 **and moderate income】** low- and moderate-income housing as

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

Matter underlined thus is new matter.

1 required by the Mt. Laurel I and II opinions and other relevant court
2 decisions.

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

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

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

27 i. **Certain amendments to the enabling act of the Council on**
28 **Affordable Housing are necessary to provide guidance to the council**
29 **to ensure consistency with the legislative intent, while at the same**
30 **time clarifying the limitations of the council in its rulemaking.**
31 **Although the court has remarked in several decisions that the**
32 **Legislature has granted the council considerable deference in its**
33 **rulemaking, the Legislature retains its power and obligation to clarify**
34 **and amend the enabling act from which the council derives its**
35 **rulemaking power, from time to time, in order to better guide the**
36 **council.] (Deleted by amendment, P.L. , c.) (pending before the**
37 **Legislature as this bill)**

38 j. The Legislature finds that the use of regional contribution
39 agreements, which permits municipalities to transfer a certain portion
40 of their fair share housing obligation outside of the municipal
41 borders, should no longer be utilized as a mechanism for the creation
42 of affordable housing **by the council**.

43 k. The Legislature finds that the role of the Council on Affordable
44 Housing, as intended in the original enactment of the "Fair Housing
45 Act," has not developed in practice as was intended in the legislation.

46 l. The council's inability to function ultimately led the Supreme
47 Court in 2015 to direct lower courts to establish affordable housing
48 obligations for municipalities and certify municipal plans to meet

1 those obligations, generally through approving settlement
2 agreements between municipalities and advocates for the low- and
3 moderate-income households of the State.

4 m. The Legislature finds that the council's inability to function
5 led to a "gap period" that frustrated the intent of the Legislature and
6 compliance with constitutional and statutory obligations, and that it
7 is necessary to establish definitive deadlines for municipal action and
8 any challenges to those actions to avoid such a "gap period" from
9 being repeated in the future.

10 n. The Legislature finds that although the court-led system that
11 has developed since 2015 has resulted in a significant number of
12 settlement agreements and increased production of affordable
13 housing, the system could operate more expeditiously to produce
14 affordable housing, and at a lower cost to all parties, if appropriate
15 standards are established by the Legislature to be applied throughout
16 the State including more clarity on calculation on fair share
17 affordable housing obligations using transparent and established data
18 sources to eliminate the lengthy and costly processes of determining
19 those obligations that have characterized both the Council on
20 Affordable Housing and court-led system.

21 o. The Legislature determines that, considering the unique history
22 of the "Fair Housing Act," the Council on Affordable Housing shall
23 be abolished, and that, pursuant to the formulas and process
24 established pursuant to sections 6 and 7 of P.L. , c. (C. and
25 C.) (pending before the Legislature as this bill), a municipality
26 shall be authorized to determine its fair share affordable housing
27 obligation, by binding resolution, with the guidance of a court-
28 appointed obligation special master, but that advocates for the low-
29 and moderate-income households of the State shall be provided with
30 an opportunity to contest the municipal determination.

31 p. The Legislature finds that the population of persons aged 65
32 years and older in the State has grown from approximately 13 percent
33 in 1990, to 17 percent in 2021, and that such growth, in conjunction
34 with expected future growth, makes it appropriate for the Legislature
35 to continue to allow up to 25 percent of the units towards a
36 municipality's prospective affordable housing obligation to be
37 satisfied through the creation of age-restricted housing.

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

39
40 2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
41 read as follows:

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

43 a. "Council" means the Council on Affordable Housing
44 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall
45 have primary jurisdiction for the administration of housing
46 obligations in accordance with sound regional planning
47 considerations in this State**】** abolished pursuant to section 3
48 of P.L. , c. (C.) (pending before the Legislature as this bill).

- 1 b. "Housing region" means a geographic area [of not less than
2 two nor more than four contiguous, whole counties which exhibit
3 significant social, economic and income similarities, and which
4 constitute to the greatest extent practicable the primary metropolitan
5 statistical areas as last defined by the United States Census Bureau
6 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)]
7 established pursuant to subsection b. of section 6 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).
- 9 c. **["Low income"]** "Low-income housing" means housing
10 affordable according to federal Department of Housing and Urban
11 Development or other recognized standards for home ownership and
12 rental costs and occupied or reserved for occupancy by households
13 with a gross household income equal to 50 percent or less of the
14 median gross household income for households of the same size
15 within the housing region in which the housing is located.
- 16 d. **["Moderate income"]** "Moderate-income housing" means
17 housing affordable according to federal Department of Housing and
18 Urban Development or other recognized standards for home
19 ownership and rental costs and occupied or reserved for occupancy
20 by households with a gross household income equal to more than 50
21 **[%]** percent but less than 80 percent of the median gross household
22 income for households of the same size within the housing region in
23 which the housing is located.
- 24 e. **["Resolution of participation"]** means a resolution adopted by
25 a municipality in which the municipality chooses to prepare a fair
26 share plan and housing element in accordance with P.L.1985, c.222
27 (C.52:27D-301 et al.). **](Deleted by amendment, P.L. , c.)**
28 (pending before the Legislature as this bill)
- 29 f. "Inclusionary development" means a residential housing
30 development in which a substantial percentage of the housing units
31 are provided for a reasonable income range of **[low and moderate**
32 **income]** low- and moderate-income households.
- 33 g. "Conversion" means the conversion of existing commercial,
34 industrial, or residential structures for **[low and moderate income]**
35 low- and moderate-income housing purposes where a substantial
36 percentage of the housing units are provided for a reasonable income
37 range of **[low and moderate income]** low- and moderate-income
38 households.
- 39 h. "Development" means any development for which permission
40 may be required pursuant to the "Municipal Land Use Law,"
41 P.L.1975, c.291 (C.40:55D-1 et seq.).
- 42 i. "Agency" means the New Jersey Housing and Mortgage
43 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et seq.).
- 44 j. "Prospective need" means a projection of housing needs based
45 on development and growth which is reasonably likely to occur in a
46 region or a municipality, as the case may be, as a result of actual
47 determination of public and private entities. **[In determining**
48 **prospective need, consideration shall be given to approvals of**

1 development applications, real property transfers, and economic
2 projections prepared by the State Planning Commission established
3 by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)**】**
4 Prospective need shall be determined by the methodology set forth
5 pursuant to sections 6 and 7 of P.L. , c. (C. and C.)
6 (pending before the Legislature as this bill) for the fourth round and
7 all future rounds of housing obligations.

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

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

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

29 n. "Accessory dwelling unit" means a residential dwelling unit
30 that provides complete independent living facilities for one or more
31 persons, consisting of provisions for living, sleeping, eating,
32 sanitation, and cooking, including a stove and refrigerator, and is
33 located within a proposed or existing primary dwelling, within an
34 existing or proposed structure that is accessory to a dwelling on the
35 same lot, constructed in whole or part as an extension to a proposed
36 or existing primary dwelling, or constructed as a separate detached
37 structure on the same lot as the existing or proposed primary
38 dwelling.

39 o. "Builder's remedy" means court imposed site-specific relief
40 for a litigant who is an individual or a profit-making entity for which
41 the court requires a municipality to utilize zoning techniques such as
42 mandatory set-asides or density bonuses, which provide for the
43 economic viability of a residential development by including housing
44 that is not for low- and moderate-income households.

45 p. "Commissioner" means the Commissioner of Community
46 Affairs.

47 q. "Compliance certification" means the certification obtained
48 by a municipality pursuant to section 3 of P.L. , c. (C.)
49 (pending before the Legislature as this bill), that protects the

1 municipality from a builder's remedy during the current round of
2 present and prospective need and through July 1 of the year the next
3 round begins, which is also known as a "judgment of compliance" or
4 "judgment of repose."

5 r. "County level housing judge" means a judge appointed
6 pursuant to section 5 of P.L. , c. (C.) (pending before the
7 Legislature as this bill), to resolve disputes over the compliance of
8 municipal fair share affordable housing obligations and municipal
9 fair share plans and housing elements, with the "Fair Housing Act,"
10 P.L.1985, c.222 (C.52:27D-301 et al.).

11 r. "Deficient housing unit" means housing that: (1) is over fifty
12 years old and overcrowded; (2) lacks complete plumbing; or (3) lacks
13 complete kitchen facilities.

14 s. "Department" means the Department of Community Affairs.

15 t. "Fair share plan" means the plan or proposal that is in a form
16 which may readily be adopted as an ordinance pursuant to subsection
17 f. of section 3 of P.L. , c. (C.) (pending before the Legislature
18 as this bill), by which a municipality proposes to satisfy its obligation
19 to create a realistic opportunity to meet its fair share of low- and
20 moderate-income housing needs of its region and which details the
21 affirmative measures the municipality proposes to undertake to
22 achieve its fair share of low- and moderate-income housing, as
23 provided in the municipal housing element, and addresses the
24 development regulations, such as inclusionary requirements and
25 development fees, necessary to implement the housing element.

26 u. "Housing element" means that portion of a municipality's
27 master plan consisting of reports, statements, proposals, maps,
28 diagrams, and text designed to meet the municipality's fair share of
29 its region's present and prospective housing needs, particularly with
30 regard to low- and moderate-income housing, and which shall
31 contain the municipal present and prospective obligation for
32 affordable housing, determined pursuant to subsection f. of section 3
33 of P.L. , c. (C.) (pending before the Legislature as this bill).

34 v. "Mobile home park" means a parcel of land, or two or more
35 contiguous parcels of land, containing sites equipped for the
36 installation of mobile or manufactured homes, where these sites are
37 under common ownership and control for the purpose of leasing each
38 site to the owner of a mobile or manufactured home for the
39 installation thereof, and where the owner provides services that are
40 provided by the municipality in which the park is located for property
41 owners outside the park, which services may, inter alia, include:
42 construction and maintenance of streets, lighting of streets and other
43 common areas, garbage removal, snow removal, and provision for
44 the drainage of surface water from home sites and common areas.

45 w. "Obligation special master" means a special master appointed
46 by the Chief Justice of the Supreme Court pursuant to subsection b.
47 or c. of section 3 of P.L. , c. (C.) (pending before the
48 Legislature as this bill).

x. "Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

y. "Transitional housing" means temporary housing that:

(1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements;

(2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing;

(3) is licensed by the department; and

(4) allows households to remain for a minimum of six months.

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

3. (New section) a. The Council on Affordable Housing, established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), is abolished. Each municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L. , c. (C. and C.) (pending before the Legislature as this bill) through the guidance of the preliminary findings of an obligation special master appointed pursuant to subsection b. or c. of this section.

b. Following the expiration of the third round of affordable housing obligations on July 1, 2025, a municipality shall have immunity from a builder's remedy if the municipality complies with the deadlines established in P.L. , c. (C.) (pending before the Legislature as this bill) for both determining present and prospective obligations, and for adopting a housing element and fair share plan to meet those obligations. No later than one month following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), the Chief Justice of the Supreme Court shall appoint an obligation special master for each of the northern, central, and southern areas of the State, for the purpose of calculating regional need and municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L. , c. (C. and C.) (pending before the Legislature as this bill), for their respective area of the State. For the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), the northern area of the State shall consist of regions 1 and 2, the central area of the State shall consist of regions 3 and 4, and the southern area of the State shall consist of regions 5 and 6, as the regions are established pursuant to paragraph (1) of subsection b. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill). If the Chief Justice is unable to identify separate qualified persons to each serve as the obligation special master for each of the northern, central, and southern areas of the State, then the Chief Justice shall be permitted to appoint a single person to serve as the obligation special master for more than one area of the State.

c. No later than 18 months prior to the beginning of the fifth round on July 1, 2035, and each subsequent new round of housing

1 obligations every 10 years thereafter, the Chief Justice of the
2 Supreme Court shall appoint an obligation special master for each of
3 the northern, central, and southern areas of the State, for the purpose
4 of calculating regional need and municipal present and prospective
5 obligations in accordance with the formulas established in sections 6
6 and 7 of P.L. , c. (C. and C.) (pending before the
7 Legislature as this bill).

8 d. The courts may permit each obligation special master to
9 appoint professional staff, qualified by appropriate training and
10 experience to assist in these functions, to serve at the pleasure of the
11 obligation special master. For the fourth round of affordable housing
12 obligations, each obligation special master shall publish calculations
13 of regional need and municipal obligations for each region in their
14 respective areas of the State on or before November 15, 2024 on the
15 Internet website of the Affordable Housing Dispute Resolution
16 Program, established pursuant to section 5 of P.L. , c. (C.)
17 (pending before the Legislature as this bill). For the fifth round, and
18 each subsequent new round of housing obligations, each obligation
19 special master shall publish these calculations on or before
20 November 15 of the year prior to the start of the new round. A
21 municipality may take into consideration the calculations of the
22 obligation special master in determining its present and prospective
23 obligations.

24 e. The Administrative Director of the Courts may establish
25 procedures for each obligation special master's calculations,
26 including procedures for participants in actions filed pursuant to
27 section 13 of P.L.1985, c.222 (C.52:27D-313) to provide expert
28 reports to assist the obligation special master in making its
29 calculations, provided that the ultimate determination of a
30 municipality's present and prospective need shall be through the
31 process as set forth below. The preliminary findings of each
32 obligation special master shall merely constitute guidance, and shall
33 not be subject to a challenge by an interested party.

34 f. (1) (a) With consideration of the preliminary findings of the
35 obligation special master pursuant to this section, a municipality shall
36 determine its present and prospective fair share obligation for
37 affordable housing in accordance with the formulas established in
38 sections 6 and 7 of P.L. , c. (C. and C.) (pending before
39 the Legislature as this bill) by resolution, which shall describe the
40 basis for its determination and bind the municipality to adopt a
41 housing element and fair share plan pursuant to paragraph (2) of this
42 subsection based on this determination as may be adjusted by the
43 program as set forth in this subsection.

44 (b) For the fourth round of affordable housing obligations, this
45 determination shall be made by binding resolution no later than
46 January 31, 2025. After adoption of this binding resolution, the
47 municipality shall publish the resolution with the program through
48 the program's publicly accessible Internet website no later than 48
49 hours following adoption. If the municipality does not meet this

1 deadline, it immediately shall lose immunity from builder's remedy
2 litigation. If the municipality meets this deadline, then the
3 municipality's determination of its obligation shall be established by
4 default, without any approval, beginning on March 1, 2025, as the
5 municipality's obligation for the fourth round, unless challenged by
6 an interested party on or before February 28, 2025. An interested
7 party may file a challenge with the program, after adoption of the
8 binding resolution and prior to March 1, 2025, alleging that the
9 municipality's determination of its present and prospective
10 obligation does not comply with the requirements of sections 6 and 7
11 of P.L. , c. (C.) (pending before the Legislature as this bill).
12 For the fifth round, and each subsequent new round of housing
13 obligations, the deadlines established in this subparagraph shall be
14 on the last day of January, the last day of February, and the first day
15 of March, respectively, of the year of the start of each new round.

16 (c) The Administrative Director of the Courts shall establish
17 procedures for the program to consider the challenge and resolve a
18 dispute initiated by an interested party pursuant to subparagraph (b)
19 of this paragraph. To resolve a challenge, the program shall apply an
20 objective assessment standard to determine whether or not the
21 municipality's calculation of its obligation is compliant with the
22 requirements of sections 6 and 7 of P.L. , c. (C.) (pending
23 before the Legislature as this bill). Any challenge must state with
24 particularity how the municipal calculation fails to comply with
25 sections 6 and 7 of P.L. , c. (C. and C.) (pending before
26 the Legislature as this bill) and include the challenger's own
27 calculation of the fair share obligations in compliance with sections
28 6 and 7 of P.L. , c. (C. and C.) (pending before the
29 Legislature as this bill). The program shall establish procedures to
30 summarily dismiss any objection or challenge that does not meet
31 these minimum standards. For the purpose of efficiency, the program
32 shall, at its own discretion, or upon the request of the municipality,
33 permit multiple challenges to the same municipal determination to be
34 consolidated. The program's approach to resolving a dispute may
35 include: (i) a finding that the municipality's determination of its
36 present and prospective need obligation did not facially comply with
37 the requirements of sections 6 and 7 of P.L. , c. (C. and C.)
38 (pending before the Legislature as this bill) and thus the
39 municipality's immunity shall be revoked; (ii) an adjustment of the
40 municipality's determination of its present and prospective need
41 obligation to comply with the requirements of sections 6 and 7 of
42 P.L. , c. (C. and C.) (pending before the Legislature as
43 this bill) without revoking immunity; or (iii) a rejection of a
44 challenge and affirm the municipality's determination. The decision
45 shall be provided to the municipality and all parties that have filed
46 challenges no later than March 31 of the year of the start of the new
47 round and concurrently posted on the program's Internet website.
48 The Administrative Director of the Courts shall establish procedures
49 for any further appellate review of such determinations, and may

1 establish an expedited process for consolidated review of any such
2 challenges by the Supreme Court, provided that any party seeking
3 appellate review shall not change the deadlines established for
4 municipal filing of a housing element and fair share plan, and
5 implementing ordinances.

6 (2) (a) A municipality shall adopt a housing element and fair
7 share plan as provided for by the "Fair Housing Act," P.L.1985, c.222
8 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning
9 and other ordinances and resolutions to implement its present and
10 prospective obligation established in paragraph (1) of this subsection
11 on or before June 30, 2025. After adoption of the housing element
12 and fair share plan, and the proposal of drafts of the appropriate
13 zoning and other ordinances and resolutions, the municipality shall
14 within 48 hours of adoption or by June 30, 2025, whichever is sooner,
15 submit the same to the program through the program's Internet
16 website. Any municipality that does not make this submission by
17 June 30, 2025, shall not retain immunity from builder's remedy
18 litigation and shall be subject to review through the declaratory
19 judgment process as established in paragraph (3) of this subsection.
20 As part of its housing element and fair share plan, the municipality
21 shall include an assessment of the degree to which the municipality
22 has met its fair share obligation from the prior rounds of affordable
23 housing obligations as established by prior court approval, or
24 approval by the council, and determine to what extent this obligation
25 is unfulfilled or whether the municipality has credits in excess of its
26 prior round obligations. If a prior round obligation remains
27 unfulfilled, or a municipality never received an approval from court
28 or the council for any prior round, the municipality shall address such
29 unfulfilled prior round obligation in its housing element and fair
30 share plan. In addressing prior round obligations, the municipality
31 shall retain any sites that, in furtherance of the prior round obligation,
32 are the subject of a contractual agreement with a developer, or for
33 which the developer has filed a complete application seeking
34 subdivision or site plan approval prior to the date by which the
35 housing element and fair share plan are required to be submitted, and
36 shall demonstrate how any sites that were not built in the prior rounds
37 continue to present a realistic opportunity, which may include
38 proposing changes to the zoning on the site to make its development
39 more likely. The municipality shall only plan to replace any sites
40 planned for development as a part of a prior court approval,
41 settlement agreement, or approval by the council, with alternative
42 development plans, if it is determined that the previously planned
43 sites no longer present a realistic opportunity, and the sites in the
44 alternative development plan provide an equivalent number of
45 affordable units and are otherwise in compliance with the "Fair
46 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount
47 Laurel doctrine. If a municipality proposes to replace a site for which
48 a complete application seeking subdivision or site plan approval has
49 not been filed prior to date by which the housing element and fair

1 share plan is required to be submitted, there shall be a rebuttable
2 presumption in any challenge filed to the municipality's plan that any
3 site for which a zoning designation was adopted creating a realistic
4 opportunity for the development of a site prior to June 1, 2020 may
5 be replaced with an alternative site that provides a realistic
6 opportunity for at least the same number of affordable units and is
7 otherwise in compliance with the "Fair Housing Act," P.L.1985,
8 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a
9 municipality has credits in excess of its prior round obligations, and
10 such excess credits represent housing that will continue to be deed-
11 restricted and affordable through the current round, the municipality
12 may include such housing towards addressing the municipality's new
13 calculation of prospective need. The municipality may in its plan
14 lower its prospective need obligation to the extent necessary to
15 prevent establishing a prospective need obligation that requires the
16 municipality to provide a realistic opportunity for more than 1,000
17 housing units after application of any excess credits, or to prevent a
18 prospective need obligation that exceeds 20 percent of the total
19 number of households in a municipality according to the most recent
20 federal decennial census. If a municipality is subject to both a 1,000
21 unit cap or 20 percent cap it may apply whichever cap results in a
22 lower prospective need obligation. For the fifth round, and for each
23 subsequent new round of housing obligations, the deadlines in this
24 paragraph shall be June 30 for the adoption of the housing element
25 and fair share plan, and the proposal of drafts of the appropriate
26 zoning and other ordinances and resolutions to implement its present
27 and prospective obligation, of the year of the start of the new round.

28 (b) Following the submission of an adopted housing element and
29 fair share plan pursuant to subparagraph (a) of this paragraph, an
30 interested party may file a response on or before August 31, 2025
31 alleging that the municipality's fair share plan and housing element
32 are not in compliance with the "Fair Housing Act," P.L.1985, c.222
33 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such allegation
34 shall not include a claim that a site on real property proposed by the
35 interested party is a better site than a site in the plan, but rather shall
36 be based on whether the housing element and fair share plan as
37 proposed is compliant with the "Fair Housing Act," P.L.1985, c.222
38 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve a
39 challenge, the program shall apply an objective assessment standard
40 to determine whether or not the municipality's housing element and
41 fair share plan is compliant with the "Fair Housing Act," P.L.1985,
42 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Any
43 interested party that files a challenge shall specify with particularity
44 which sites or elements of the municipal fair share plan do not
45 comply with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
46 et al.) or the Mount Laurel doctrine, and the basis for alleging such
47 non-compliance. The program shall establish procedures to
48 summarily dismiss any objection or challenge that does not meet
49 these minimum standards. For the purpose of efficiency, the program

1 shall, at its own discretion, or upon the request of the municipality,
2 permit multiple challenges to the same municipal housing element
3 and fair share plan to be consolidated. If no response is filed to
4 challenge a municipality's fair share plan and housing element on or
5 before August 31, 2025, then the program shall promptly provide
6 compliance certification to the municipality following an expedited
7 review unless the fair share plan and housing element are deemed out
8 of compliance with the "Fair Housing Act," P.L.1985, c.222
9 (C.52:27D-301 et al.) or the Mount Laurel doctrine. The program
10 shall facilitate communication for a challenge, and provide the
11 municipality until November 30, 2025 to commit to revising its fair
12 share plan and housing element in compliance with the changes
13 requested in the challenge, or provide an explanation as to why it will
14 not make all of the requested changes, or both. Upon resolution of a
15 challenge, the program shall issue compliance certification,
16 conditioned on the municipality's commitment, as necessary, to
17 revise its fair share plan and housing element in accordance with the
18 resolution of the challenge. The program may also terminate
19 immunity if it finds that the municipality is not determined to come
20 into constitutional compliance at any point in the process. If by
21 November 30, 2025, the municipality and any interested party that
22 filed a response have resolved the issues raised in the response
23 through agreement or withdrawal of the filing, then the program shall
24 promptly provide compliance certification to the municipality
25 following an expedited review unless the fair share plan and housing
26 element are deemed out of compliance with the "Fair Housing Act,"
27 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine.
28 For the fifth round, and each subsequent new round of housing
29 obligations, the deadline established in this subparagraph for an
30 interested party to file a challenge shall be August 31, and for the
31 municipality to revise its housing element and fair share plan in
32 response, shall be November 30, of the year of the beginning of the
33 new round.

34 (c) For the fourth round of affordable housing obligations, the
35 implementing ordinances and resolutions, proposed pursuant to
36 subparagraph (a) of this paragraph, and incorporating any changes
37 from the program, shall be adopted on or before January 31, 2026.
38 For the fifth round, and each subsequent new round of housing
39 obligations, the deadline established in this subparagraph for the
40 implementing ordinances and resolutions shall be on January 31 of
41 the year following the beginning of the new round. After adoption
42 of the implementing ordinances and resolutions by the municipality,
43 the municipality shall immediately file the ordinances and
44 resolutions with the program through the program's Internet website.

45 (d) The program may permit a municipality that still has a
46 remaining dispute by interested parties to retain immunity from
47 builder's remedy litigation into the year following the year in which
48 a new round begins if the program determines that the municipality
49 has been unable to resolve the issues disputed despite being

1 determined to come into constitutional compliance. The
2 Administrative Director of the Courts shall develop procedures to
3 enable a county level housing judge to resolve this dispute over the
4 issuance of compliance certification through a summary proceeding
5 in Superior Court following the year in which the new round begins.
6 The pendency of such a dispute shall not stay the deadline for
7 adoption of implementing ordinances and resolutions pursuant to
8 subparagraph (a) of this paragraph.

9 (3) (a) If a municipality fails to adhere to any of the deadlines
10 established in paragraphs (1) or (2) of this subsection due to
11 circumstances beyond the control of the municipality, including but
12 not limited to an inability to meet due to an extreme weather event,
13 then the program, or the county level housing judge, as determined
14 by court rules, shall permit a municipality to have a grace period to
15 come into compliance with the timeline, the length of which, and
16 effect of which on later deadlines, shall be determined on a case-by-
17 case basis.

18 (b) A municipality that has not adopted and published a binding
19 resolution pursuant to paragraph (1) of this subsection or that has not
20 adopted and filed a housing element and fair share plan pursuant to
21 paragraph (2) of this subsection may seek compliance certification
22 by filing an action pursuant to section 13 of P.L.1985, c.222
23 (C.52:27D-313), provided that any builder's remedy litigation filed
24 by a plaintiff against such a municipality prior to such time may
25 proceed notwithstanding such filing. In a municipality that has
26 adopted and published a binding resolution pursuant to paragraph (1)
27 of this subsection and has adopted and filed a housing element and
28 fair share plan pursuant to paragraph (2) of this subsection, a court
29 shall not grant a builder's remedy to a plaintiff in exclusionary zoning
30 litigation during the timeframe after the timely submission of a
31 binding resolution or fair share plan and housing element of a
32 municipality, or both, and before a challenge is submitted, or during
33 the timeframe of a challenge that is pending resolution with the
34 program pursuant to this subsection. A court may grant a builder's
35 remedy to a plaintiff in exclusionary zoning litigation after such
36 timeframe upon a finding that the municipality: (i) is determined to
37 be constitutionally noncompliant with its responsibilities pursuant to
38 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (ii)
39 has failed to meet the deadlines established pursuant to
40 P.L. , c. (C.) (pending before the Legislature as this bill); or
41 (iii) has, after receiving compliance certification, failed to comply
42 with the terms of that certification by not actually allowing for the
43 development of the affordable housing as provided for in its fair share
44 plan and housing element through actions, omissions, or both, of a
45 municipality or its subordinate boards.

46 (c) All parties shall bear their own fees and costs in proceedings
47 before the program.

48 (d) A determination by the program as to the present and
49 prospective need obligation or as to issuance of compliance

1 certification pursuant to this section shall be considered a final
2 decision, subject to review by the Appellate Division of the Superior
3 Court.

4
5 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to
6 read as follows:

7 13. a. **【A】** If a municipality 【which】 has 【filed a housing element
8 may, at any time during a two-year period following the filing of the
9 housing element, petition the council for a substantive certification
10 of its element and ordinances or】 adopted a housing element and fair
11 share plan pursuant to section 3 of P.L. , c. (C.) (pending
12 before the Legislature as this bill), but has failed to satisfy the June
13 30 deadline established pursuant to paragraph (2) of subsection f. of
14 section 3 of P.L. , c. (C.) (pending before the Legislature as
15 this bill), the municipality may be provided with a grace period
16 pursuant to paragraph (3) of subsection f. of section 3 of
17 P.L. , c. (C.) (pending before the Legislature as this bill) if
18 authorized by the program or county level housing judge, as
19 determined by the rules of court. If the municipality that has not
20 satisfied this June 30 deadline is not provided with a grace period,
21 the municipality may institute an action for declaratory judgment
22 granting it repose in the Superior Court 【, but in no event shall a grant
23 of substantive certification extend beyond a 10-year period starting
24 on the date the municipality files its housing element with the
25 council】 for the 10-year period constituting the current round of fair
26 share obligations. The municipality shall publish notice of its
27 【petition】 filing of a declaratory judgment action in a newspaper of
28 general circulation within the municipality and county and shall
29 make available to the public information on the element and
30 ordinances on the Internet website of the program in accordance with
31 【such procedures as the council shall establish. The council shall
32 also establish a procedure for providing public notice of each petition
33 which it receives】 section 3 of P.L. , c. (C.) (pending before
34 the Legislature as this bill).

35 b. **【Notwithstanding the provisions of subsection a. of this**
36 **section, a municipality which filed a housing element prior to the**
37 **effective date of P.L.1990, c.121, shall be permitted to petition for**
38 **substantive certification at any time within two years following that**
39 **filing, or within one year following the effective date of P.L.1990,**
40 **c.121, whichever shall result in permitting the municipality the**
41 **longer period of time within which to petition.】** (Deleted by
42 amendment, P.L. , c.) (pending before the Legislature as this bill)

43 **【The Council shall establish procedures for】** c. (1) A
44 municipality may file an action seeking a realistic opportunity review
45 **【at the midpoint of the certification period and shall provide for**
46 **notice to the public】 of any inclusionary development site in the**
47 housing element and fair share plan that has not received preliminary
48 site plan approval prior to the midpoint of the 10-year round, if the

1 municipality proposes an alternative site that provides a realistic
2 opportunity for the same number of affordable units and is otherwise
3 in compliance with the "Fair Housing Act," P.L.1985, c.222
4 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that
5 if the facts demonstrate that the municipality or its subordinate
6 boards have prevented the site from receiving site plan approval, then
7 the program shall reject the municipality's challenge.

8 (2) Any party may file a request for information from the program
9 regarding the progress of development at any inclusionary
10 development site in the housing element and fair share plan of a
11 municipality, or at any alternative site proposed by the municipality.
12 (cf: P.L.2001, c.435, s.5)

13
14 5. (New section) a. There is established an Affordable Housing
15 Dispute Resolution Program that shall have the purpose of efficiently
16 resolving disputes involving the "Fair Housing Act," P.L.1985, c.222
17 (C.52:27D-301 et al.), to consist of an odd number of members, of at
18 least three and no more than seven members. The Chief Justice of
19 the Supreme Court shall update the assignment of designated Mount
20 Laurel judges to indicate which current or retired and on recall judges
21 of the Superior Court shall serve as program leaders, within 30 days
22 following the effective date of P.L. , c. (C.) (pending before
23 the Legislature as this bill). The Chief Justice of the Supreme Court
24 may appoint other qualified experts as members if sufficient current
25 and retired judges are unavailable. The Chief Justice of the Supreme
26 Court shall take into consideration in making such appointments
27 experience in the employment of alternative dispute resolution
28 methods and in relevant subject matter, and that there is a balance of
29 representation among program members by political party. Not more
30 than two members of the program shall be of the same political party
31 if membership consists of three members, not more than three
32 members shall be of the same political party if membership consists
33 of five members, and not more than four members shall be of the
34 same political party if membership consists of seven members.

35 b. The Chief Justice of the Supreme Court shall designate a
36 program leader to serve as chair. The Chief Justice of the Supreme
37 Court shall make new appointments as needs arise for new
38 appointments.

39 c. The program, in its discretion and in accordance with Rules of
40 Court, may consult or employ the services of the obligation special
41 master appointed by the Chief Justice of the Supreme Court, or staff
42 of the obligation special master, to assist it in rendering
43 determinations.

44 d. The Administrative Director of the Courts shall establish a
45 filing system via an Internet website in which the public is able to
46 access, without cost, filings made pursuant to P.L. , c. (C.)
47 (pending before the Legislature as this bill) and such other related
48 filings as the Administrative Director of the Courts may include on
49 the filing system.

1 e. The Administrative Director of the Courts may assign
2 additional responsibilities to the program for resolving disputes
3 arising out of or related to the "Fair Housing Act," P.L.1985, c.222
4 (C.52:27D-301 et al.).

5 f. The Administrative Director of the Courts shall establish
6 procedures for the purpose of efficiently resolving disputes involving
7 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for
8 circumstances in which the program is unable to address the dispute
9 within the time limitations established pursuant to section 3 of
10 P.L. , c. (C.) (pending before the Legislature as this bill).
11 As a part of the procedures established pursuant to this section, in
12 order to facilitate an appropriate level of localized control of
13 affordable housing decisions, for each vicinage, the Chief Justice of
14 the Supreme Court shall designate a Superior Court judge who sits
15 within the vicinage, or a retired judge who, during the judge's tenure
16 as a judge, served within the vicinage, to serve as county level
17 housing judge to resolve disputes over the compliance, of fair share
18 plans and housing elements of municipalities within their county,
19 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

20 g. The Administrative Director of the Courts shall promulgate,
21 maintain, and apply a Code of Ethics that is modeled upon the Code
22 of Judicial Conduct of the American Bar Association, as amended
23 and adopted by the Supreme Court of New Jersey, and may establish
24 additional more restrictive ethical standards in order to meet the
25 specific needs of the program, and of county level housing judges.

26
27 6. (New section) a. Municipal present need for each 10-year
28 round of affordable housing obligations shall be determined by
29 estimating the deficient housing units occupied by low- and
30 moderate-income households in the region, following a methodology
31 comparable to the methodology used to determine third round
32 municipal present need, through the use of datasets made available
33 through the federal decennial census and the American Community
34 Survey.

35 b. For the purpose of determining regional need for the 10-year
36 round of low- and moderate-income housing obligations, running
37 from July 1, 2025 through June 30, 2035, and each 10-year round
38 thereafter:

39 (1) The regions of the State shall be comprised as follows:

40 (a) Region 1 shall consist of the counties of Bergen, Hudson,
41 Passaic, and Sussex;

42 (b) Region 2 shall consist of the counties of Essex, Morris, Union,
43 and Warren;

44 (c) Region 3 shall consist of the counties of Hunterdon,
45 Middlesex, and Somerset;

46 (d) Region 4 shall consist of the counties of Mercer, Monmouth,
47 and Ocean;

48 (e) Region 5 shall consist of the counties of Burlington, Camden,
49 and Gloucester; and

1 (f) Region 6 shall consist of the counties of Atlantic, Cape May,
2 Cumberland, and Salem.

3 (2) Regional prospective need for a 10-year round of low- and
4 moderate-income housing obligations shall be determined through
5 the calculation provided in this subsection. Projected household
6 change for a 10-year round in a region shall be estimated by
7 establishing the household change experienced in the region between
8 the most recent federal decennial census, and the second-most recent
9 federal decennial census. This household change, if positive, shall
10 be divided by 2.5 to estimate the number of low- and moderate-
11 income homes needed to address low- and moderate-income
12 household change in the region, and to determine the regional
13 prospective need for a 10-year round of low- and moderate-income
14 housing obligations.

15
16 7. (New section) a. The obligation special master appointed
17 pursuant to subsection b. or c. of section 3 of P.L. , c. (C.)
18 (pending before the Legislature as this bill) shall determine the
19 present and prospective fair share obligation for low- and moderate-
20 income housing for each municipality in the State by applying the
21 methods used in the March 8, 2018 unpublished decision of the
22 Superior Court, Law Division, Mercer County, In re Application of
23 Municipality of Princeton, as summarized in this section. A
24 municipality calculating its obligation by resolution pursuant to
25 subsection f. of section 3 of P.L. , c. (C.) (pending before
26 the Legislature as this bill) shall also determine its present and
27 prospective fair share obligation using those same methods, as
28 summarized in this section. These determinations of municipal
29 present and prospective need shall be based on a determination of the
30 present and prospective regional need for low- and moderate-income
31 housing, established pursuant to section 6 of P.L. , c. (C.)
32 (pending before the Legislature as this bill). These calculations of
33 municipal present and prospective need shall use necessary datasets
34 that are updated to the greatest extent practicable.

35 b. The obligation special master shall determine a municipality's
36 present need obligation by estimating the existing deficient housing
37 units currently occupied by low- and moderate-income households
38 within the municipality, following a methodology comparable to the
39 methodology used to determine third round present need, through the
40 use of datasets made available through the federal decennial census
41 and the American Community Survey.

42 c. The obligation special master shall determine a municipality's
43 prospective fair share obligation of the regional prospective need for
44 the upcoming 10-year round in accordance with this subsection:

45 (1) The obligation special master shall determine whether or not
46 a municipality is a qualified urban aid municipality. If a municipality
47 is a qualified urban aid municipality, the municipality shall be
48 exempt from responsibility for any fair share prospective need
49 obligation for the upcoming 10-year round. For the purposes of this

1 section, a municipality is a qualified urban aid municipality if the
2 municipality, as of July 1 of the year prior to the beginning of a new
3 round, is designated by the department, pursuant to P.L.1978, c.14
4 (C.52:27D-178 et seq.), to receive State aid, and the municipality
5 meets at least one of the following criteria:

6 (a) The ratio of substandard existing deficient housing units
7 currently occupied by low- and moderate-income households within
8 the municipality, compared to all existing housing in the
9 municipality, is greater than the equivalent ratio in the region;

10 (b) The municipality has a population density greater than 10,000
11 persons per square mile of land area; or

12 (c) The municipality has a population density of more than 6,000,
13 but less than 10,000 persons per square mile of land area, and less
14 than five percent vacant parcels not used as farmland, as measured
15 by the average of:

16 (i) The number of vacant land parcels in the municipality as a
17 percentage of the total number of parcels in the municipality; and

18 (ii) The valuation of vacant land in the municipality as a
19 percentage of total valuations in the municipality.

20 (2) The obligation special master shall determine a municipality's
21 equalized nonresidential valuation factor. To determine this factor,
22 the obligation special master shall first calculate the changes in
23 nonresidential property valuations in the municipality, since the
24 beginning of the round preceding the round being calculated, using
25 data published by the Division of Local Government Services in the
26 department. The change in the municipality's nonresidential
27 valuations shall be divided by the regional total change in
28 nonresidential valuations to determine the municipality's share of the
29 regional change as the equalized nonresidential valuation factor.

30 (3) The obligation special master shall determine a municipality's
31 income capacity factor by calculating the average of the following
32 measures:

33 (a) The municipal share of the regional sum of the differences
34 between the median municipal household income, according to the
35 most recent decennial census, and an income floor of \$100 below the
36 lowest average household income in the region; and

37 (b) The municipal share of the regional sum of the differences
38 between the median municipal household incomes and an income
39 floor of \$100 below the lowest median household income in the
40 region, weighted by the number of the households in the
41 municipality.

42 (4) The obligation special master shall determine a municipality's
43 land capacity factor by estimating the area of undeveloped land in its
44 boundaries, and regional boundaries, that may accommodate
45 development through the use of the "land use / land cover data" most
46 recently published by the Department of Environmental Protection,
47 and weighing the undeveloped land based on the planning area type
48 in which the undeveloped land is located. After applying the
49 weighting factors, the obligation special master shall determine the

1 sum of the total undeveloped land area that may accommodate
2 development in the municipality, and in the region. The
3 municipality's share of its region's undeveloped land shall be its land
4 capacity factor. Undeveloped land that may accommodate
5 development shall be weighted based on the planning area type in
6 which the undeveloped land is located, as designated pursuant to
7 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-
8 1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

9 (a) Planning Area 1 (Metropolitan) shall have a weighting factor
10 of 1.0;

11 (b) Planning Area 2 (Suburban) shall have a weighting factor of
12 1.0;

13 (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;

14 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

15 (e) Planning Area 5 (Environmentally Sensitive) shall have a
16 weighting factor of 0.0;

17 (f) Centers in Planning Areas 1 and 2 shall have a weighting factor
18 of 1.0;

19 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting
20 factor of 0.5;

21 (h) Pinelands Regional Growth Area shall have a weighting factor
22 of 0.5;

23 (i) Pinelands Town shall have a weighting factor of 0.5;

24 (j) All other Pinelands shall have a weighting factor of 0.0;

25 (k) Meadowlands shall have a weighting factor of 1.0;

26 (l) Meadowlands Center shall have a weighting factor of 1.0;

27 (m) Highlands Preservation Area shall have a weighting factor of
28 0.0;

29 (n) Highlands Planning Area Existing Community Zone, opted in
30 municipality by May 1, 2022 shall have a weighting factor of 1.0;

31 (o) Highlands Planning Area, State-designated sewer service area,
32 municipality not opted in by May 1, 2022, shall have a weighting
33 factor of 1.0; and

34 (p) All other Highlands Planning Areas shall have a weighting
35 factor of 0.0.

36 (5) The equalized nonresidential valuation factor, income
37 capacity factor, and land capacity factor, determined in paragraphs
38 (2), (3), and (4) of this subsection, shall be averaged to yield the
39 municipality's average allocation factor for distributing gross
40 regional prospective need to the municipality. The obligation special
41 master shall then multiply the regional prospective need by the
42 municipality's average allocation factor to determine the
43 municipality's gross prospective need for the 10-year round.

44 (6) The obligation special master shall adjust for secondary
45 sources of supply and demand by first calculating demolitions of low-
46 and moderate-income housing, and housing creation through
47 residential conversions. The obligation special master shall then
48 subtract a municipality's share of conversions from the sum of each

1 municipality's allocated share of gross prospective need and
2 demolitions of low- and moderate-income housing.

3

4 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read
5 as follows:

6 4. a. Upon failure to perform any obligation of a residential
7 mortgage by the residential mortgage debtor and before any
8 residential mortgage lender may accelerate the maturity of any
9 residential mortgage obligation and commence any foreclosure or
10 other legal action to take possession of the residential property which
11 is the subject of the mortgage, the residential mortgage lender shall
12 give a notice of intention, which shall include a notice of the right to
13 cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-
14 57), at least 30 days, but not more than 180 days, in advance of such
15 action as provided in this section, to the residential mortgage debtor,
16 and, if the mortgage is secured by a residence for which a restriction
17 on affordability was recorded in the county in which the property is
18 located, the clerk of the municipality in which the subject property is
19 located, the municipal housing liaison, if one has been appointed by
20 the municipality **【**pursuant to the regulations of the Council on
21 Affordable Housing, and the Commissioner of Community Affairs**】**.
22 For the purposes of this section, "restriction on affordability" means
23 any conditions recorded with a mortgage or a deed which would limit
24 the sale of such property to income qualified households pursuant to
25 the rules adopted to effectuate the "Fair Housing Act," P.L.1985,
26 c.222 (C.52:27D-301 et al.).

27 b. Notice of intention to take action as specified in subsection a.
28 of this section shall be in writing, provided to the Department of
29 Community Affairs in accordance with subsection a. of section 2 of
30 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or
31 certified mail, return receipt requested, at the debtor's last known
32 address, and, if different, to the address of the property which is the
33 subject of the residential mortgage. The notice is deemed to have
34 been effectuated on the date the notice is delivered in person or
35 mailed to the party.

36 c. The written notice shall clearly and conspicuously state in a
37 manner calculated to make the debtor aware of the situation:

- 38 (1) the particular obligation or real estate security interest;
39 (2) the nature of the default claimed;
40 (3) the right of the debtor to cure the default as provided in
41 section 5 of P.L.1995, c.244 (C.2A:50-57);
42 (4) what performance, including what sum of money, if any, and
43 interest, shall be tendered to cure the default as of the date specified
44 under paragraph (5) of this subsection c.;
45 (5) the date by which the debtor shall cure the default to avoid
46 initiation of foreclosure proceedings, which date shall not be less than
47 30 days after the date the notice is effective, and the name and address
48 and phone number of a person to whom the payment or tender shall
49 be made;

1 (6) that if the debtor does not cure the default by the date
2 specified under paragraph (5) of this subsection c., the lender may
3 take steps to terminate the debtor's ownership in the property by
4 commencing a foreclosure suit in a court of competent jurisdiction;

5 (7) that if the lender takes the steps indicated pursuant to
6 paragraph (6) of this subsection c., a debtor shall still have the right
7 to cure the default pursuant to section 5 of P.L.1995, c.244 (C.2A:50-
8 57), but that the debtor shall be responsible for the lender's court costs
9 and attorneys' fees in an amount not to exceed that amount permitted
10 pursuant to the Rules Governing the Courts of the State of New
11 Jersey;

12 (8) the right, if any, of the debtor to transfer the real estate to
13 another person subject to the security interest and that the transferee
14 may have the right to cure the default as provided in P.L.1995, c.244
15 (C.2A:50-53 et seq.), subject to the mortgage documents;

16 (9) that the debtor is advised to seek counsel from an attorney of
17 the debtor's own choosing concerning the debtor's residential
18 mortgage default situation, and that, if the debtor is unable to obtain
19 an attorney, the debtor may communicate with the New Jersey Bar
20 Association or Lawyer Referral Service in the county in which the
21 residential property securing the mortgage loan is located; and that,
22 if the debtor is unable to afford an attorney, the debtor may
23 communicate with the Legal Services Office in the county in which
24 the property is located;

25 (10) the possible availability of financial assistance for curing a
26 default from programs operated by the State or federal government
27 or nonprofit organizations, if any, as identified by the Commissioner
28 of Banking and Insurance and, if the property is subject to restrictions
29 on affordability, the address and phone number of the municipal
30 affordable housing liaison and of the New Jersey Housing and
31 Mortgage Finance Agency. This requirement shall be satisfied by
32 attaching a list of such programs promulgated by the commissioner;

33 (11) the name and address of the lender and the telephone number
34 of a representative of the lender whom the debtor may contact if the
35 debtor disagrees with the lender's assertion that a default has occurred
36 or the correctness of the mortgage lender's calculation of the amount
37 required to cure the default;

38 (12) that if the lender takes the steps indicated pursuant to
39 paragraph (6) of this subsection, the debtor has the option to
40 participate in the Foreclosure Mediation Program following the filing
41 of a mortgage foreclosure complaint by initiating mediation pursuant
42 to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64
43 (C.2A:50-77). Notice of the option to participate in the Foreclosure
44 Mediation Program shall adhere to the requirements of section 3 of
45 P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or
46 guidelines adopted by the Supreme Court;

47 (13) that the debtor is entitled to housing counseling, at no cost to
48 the debtor, through the Foreclosure Mediation Program established

1 by the New Jersey Judiciary, including information on how to contact
2 the program;

3 (14) that if the property which is the subject of the mortgage has
4 more than one dwelling unit but less than five, one of which is
5 occupied by the debtor or a member of the debtor's immediate family
6 as the debtor's or member's residence at the time the loan is
7 originated, and is not properly maintained and meets the necessary
8 conditions for receivership eligibility, established pursuant to section
9 4 of the "Multifamily Housing Preservation and Receivership Act,"
10 P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall
11 file an order to show cause to appoint a receiver; and

12 (15) that the lender is either licensed in accordance with the "New
13 Jersey Residential Mortgage Lending Act," sections 1 through 39 of
14 P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from
15 licensure under the act in accordance with applicable law.

16 d. The notice of intention to foreclose required to be provided
17 pursuant to this section shall not be required if the debtor has
18 voluntarily surrendered the property which is the subject of the
19 residential mortgage.

20 e. The duty of the lender under this section to serve notice of
21 intention to foreclose is independent of any other duty to give notice
22 under the common law, principles of equity, State or federal statute,
23 or rule of court and of any other right or remedy the debtor may have
24 as a result of the failure to give such notice.

25 f. Compliance with this section and subsection a. of section 2 of
26 P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the pleadings
27 of any legal action referred to in this section. If the plaintiff in any
28 complaint seeking foreclosure of a residential mortgage alleges that
29 the property subject to the residential mortgage has been abandoned
30 or voluntarily surrendered, the plaintiff shall plead the specific facts
31 upon which this allegation is based.

32 g. If more than 180 days have elapsed since the date the notice
33 required pursuant to this section is sent, and any foreclosure or other
34 legal action to take possession of the residential property which is the
35 subject of the mortgage has not yet been commenced, the lender shall
36 send a new written notice at least 30 days, but not more than 180
37 days, in advance of that action.

38 h. If the property which is the subject of the notice of intention
39 to foreclose has more than one dwelling unit but less than five, one
40 of which is occupied by the debtor or a member of the debtor's
41 immediate family as the debtor's or member's residence at the time
42 the loan is originated, and is not properly maintained and meets the
43 necessary conditions for receivership eligibility, established pursuant
44 to section 4 of the "Multifamily Housing Preservation and
45 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential
46 mortgage lender shall file an order to show cause to appoint a
47 receiver.

48 (cf: P.L.2019, c.134, s.4)

1 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as
2 follows:

3 2. The New Jersey Council on Physical Fitness and Sports,
4 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is
5 authorized to provide grants to assist low-income families in
6 purchasing the protective eyewear. As used in this section, a "low-
7 income family" means a family which qualifies for low-income
8 housing under the standards promulgated by the **【Council on**
9 **Affordable Housing】** New Jersey Housing and Mortgage Finance
10 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222
11 (C.52:27D-301 et al.).
12 (cf: P.L.2005, c.306, s.2)

13
14 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to read
15 as follows:

16 25. a. **【The Council on Affordable Housing】** Each obligation
17 special master appointed pursuant to subsection b. or c. of section 3
18 of P.L. , c. (C.) (pending before the Legislature as this bill)
19 shall take into consideration the regional master plan **【prior to**
20 **making any】** as part of each obligation special master's duties
21 specified in section 7 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) in the obligation special master's
23 determination regarding the allocation of the prospective fair share
24 of the housing need **【in any municipality in the Highlands Region】**
25 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)
26 for **【the】** any fair share period subsequent to 【1999】 the effective
27 date of P.L. , c. (C.) (pending before the Legislature as this
28 bill) if a municipality is in the Highlands Region.

29 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall
30 affect protections provided through a grant of substantive
31 certification or a judgment of repose granted prior to **【the date of**
32 **enactment of this act】** August 10, 2004.
33 (cf: P.L.2004, c.120, s.25)

34
35 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read
36 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 i. A bona fide not for profit entity and any individuals directly
2 employed by that entity, so long as the entity maintains its tax exempt
3 status under Section 501(c)(3) of the Internal Revenue Code of 1986
4 and otherwise meets the definition of "bona fide not for profit entity"
5 in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically
6 determined by the department in accordance with rules established
7 by the commissioner.
8 (cf: P.L.2018, c.108, s.3)

9
10 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to read
11 as follows:

12 2. a. A person who violates a requirement of this act shall be
13 warned of the violation by the enforcing official. The parent or legal
14 guardian of that person also may be fined a maximum of \$25 for the
15 person's first offense and a maximum of \$100 for a subsequent
16 offense if it can be shown that the parent or guardian failed to
17 exercise reasonable supervision or control over the person's conduct.
18 Penalties provided in this section for a failure to wear a helmet may
19 be waived if an offender or his parent or legal guardian presents
20 suitable proof that an approved helmet was owned at the time of the
21 violation or has been purchased since the violation occurred.

22 b. All money collected as fines under subsection a. of this
23 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-
24 10.6) shall be deposited in a nonlapsing revolving fund to be known
25 as the "Bicycle and Skating Safety Fund." Interest earned on money
26 deposited in the fund shall accrue to the fund. Money in the fund
27 shall be utilized by the director to provide educational programs
28 devoted to bicycle, roller skating and skateboarding safety. If the
29 director determines that sufficient money is available in the fund, he
30 also may use, in a manner prescribed by rule and regulation, the
31 money to assist low income families in purchasing approved bicycle
32 helmets. For the purposes of this subsection, "low income family"
33 means a family which qualifies for low income housing under the
34 standards promulgated by the **【Council on Affordable Housing】** New
35 Jersey Housing and Mortgage Finance Agency pursuant to the
36 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).
37 (cf: P.L.1997, c.411, s.11)

38
39 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to
40 read as follows:

41 33. The Legislature finds and declares:

42 a. The collection of development fees from builders of residential
43 and non-residential properties has been authorized by the court
44 through the powers **【delegated to the Council on Affordable**
45 **Housing】** established pursuant to the "Fair Housing Act," P.L.1985,
46 c.222 (C.52:27D-301 et al.). Due to of the Legislature's
47 determination that the role of the Council on Affordable Housing has
48 not developed in practice as intended, the Legislature further
49 determines that authority relating to rulemaking on the collection of

1 residential and non-residential development fees is appropriately
2 delegated to the Department of Community Affairs, given the
3 department's existing roles related to local government finance and
4 the funding and financing of affordable housing throughout the State.

5 b. New Jersey's land resources are becoming more scarce, while
6 its redevelopment needs are increasing. In order to balance the needs
7 of developing and redeveloping communities, a reasonable method
8 of providing for the housing needs of **low and moderate income**
9 low-, moderate-, and middle income middle-income households,
10 without mandating the inclusion of housing in every non-residential
11 project, must be established.

12 c. A Statewide non-residential development fee program, which
13 permits municipalities **under the council's jurisdiction** that have
14 obtained or are in the process of seeking compliance certification to
15 retain these fees for use in the municipality will provide a fair and
16 balanced funding method to address the State's affordable housing
17 needs, while providing an incentive to all municipalities to **seek**
18 **substantive** obtain compliance certification **from the council**.

19 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
20 organizations are directed to invest in the Casino Reinvestment
21 Development Authority to ensure that the development of housing
22 for families of **low and moderate income** low- and moderate-
23 income shall be provided. The Casino Reinvestment Development
24 Authority **,** in consultation with the council,**]** shall work to
25 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301
26 et al.).

27 e. The "Statewide Non-Residential Development Fee Act,"
28 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
29 C.40:55D-8.7), prohibits municipalities from imposing their own
30 fees to fund affordable housing on non-residential development, and
31 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this
32 underlying policy.

33 f. The negative impact of a State policy that over-relies on a
34 municipal fee structure and of State programs that require a
35 municipality to impose fees and charges on developers must be
36 balanced against any public good expected from such regulation. It
37 is undisputable that the charging of fees at high levels dissuades
38 commerce from locating within a State or municipality or locality
39 and halts non-residential and residential development, and these ill
40 effects directly increase the overall costs of housing, and could
41 impede the constitutional obligation to provide for a realistic
42 opportunity for housing for families at all income levels.

43 (cf: P.L.2009, c.90, s.36)

44

45 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to
46 read as follows:

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

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

6 "Commissioner" means the Commissioner of Community Affairs.

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

9 "Department" means the Department of Community Affairs.

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

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

19 "Mixed use development" means any development which includes
20 both a non-residential development component and a residential
21 development component, and shall include developments for which
22 (1) there is a common developer for both the residential development
23 component and the non-residential development component,
24 provided that for purposes of this definition, multiple persons and
25 entities may be considered a common developer if there is a
26 contractual relationship among them obligating each entity to
27 develop at least a portion of the residential or non-residential
28 development, or both, or otherwise to contribute resources to the
29 development; and (2) the residential and non-residential
30 developments are located on the same lot or adjoining lots, including
31 but not limited to lots separated by a street, a river, or another
32 geographical feature.

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

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

48 "Relating to the provision of housing" shall be liberally construed
49 to include the construction, maintenance, or operation of housing,

1 including but not limited to the provision of services to such housing
2 and the funding of any of the above.

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

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

10

11 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to
12 read as follows:

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

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

19 (2) A fee equal to two and one-half percent of the increase in
20 equalized assessed value, of the additions to existing structures to be
21 used for non-residential purposes.

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

32 (1) parking lots and parking structures, regardless of whether the
33 parking lot or parking structure is constructed in conjunction with a
34 non-residential development, such as an office building, or whether
35 the parking lot is developed as an independent non-residential
36 development;

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

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

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

48 (5) projects that are located within an eligible municipality, as
49 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a

1 majority of the project is located within a one-half mile radius of the
2 midpoint of a platform area for a light rail system; and

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

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

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

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

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

35 (2) The **【council】** department shall maintain on its Internet
36 website a list of each municipality that is authorized to use the
37 development fees collected pursuant to this section and that has a
38 confirmed status of compliance with the "Fair Housing Act,"
39 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of seeking
40 compliance certification, which compliance shall include a spending
41 plan **【authorized by the council】** pursuant to section 8 of P.L.2008,
42 c.46 (C.52:27D-329.2) for all development fees collected.

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

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

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

39 A developer of a mixed use development shall be required to pay
40 the Statewide non-residential development fee relating to the non-
41 residential development component of a mixed use development
42 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

43 Non-residential construction which is connected with the
44 relocation of the facilities of a for-profit hospital shall be subject to
45 the fee authorized to be imposed under this section to the extent of
46 the increase in equalized assessed valuation in accordance with
47 regulations to be promulgated by the Director of the Division of
48 Taxation, Department of the Treasury.

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

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

19 The Treasurer shall adopt such regulations as necessary to
20 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
21 through C.40:55D-8.7), in accordance with the "Administrative
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
23 (cf: P.L.2008, c.46, s.35)
24

25 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to
26 read as follows:

27 36. a. The commissioner **【**, in consultation with the council,**】**
28 shall promulgate, in accordance with the provisions of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), such regulations as are necessary for the prompt and effective
31 implementation of the provisions and purposes of **【P.L.2008, c.46**
32 **(C.52:27D-329.1 et al.)】** section 8 of P.L.2008, c.46 (C.52:27D-
33 329.2), including, but not limited to, provisions for the payment of
34 any necessary administrative costs related to the assessment of
35 properties and collection of any development fees by a municipality.

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

44 (cf: P.L.2008, c.46, s.36)
45

46 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to
47 read as follows:

1 38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-
2 329.1 et al.) including subsection b. of this section, any provision of
3 a local ordinance which imposes a fee for the development of
4 affordable housing upon a developer of non-residential property,
5 including any and all development fee ordinances adopted in
6 accordance with any regulations of the **【Council on Affordable**
7 **Housing】** department, or any provision of an ordinance which
8 imposes an obligation relating to the provision of housing affordable
9 to low and moderate income households, or payment in-lieu of
10 building as a condition of non-residential development, shall be void
11 and of no effect. A provision of an ordinance which imposes a
12 development fee which is not prohibited by any provision of
13 P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by
14 this section.

15 b. No affordable housing obligation shall be imposed concerning
16 a mixed use development that would result in an affordable housing
17 obligation greater than that which would have been imposed if the
18 residential portion of the mixed use development had been developed
19 independently of the non-residential portion of the mixed use
20 development.

21 c. Whenever the developer of a non-residential development
22 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
23 committed itself to make a financial or other contribution relating to
24 the provision of housing affordable to low and moderate income
25 households, the non-residential development fee authorized pursuant
26 to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied through
27 the investment obligations made pursuant to P.L.1977, c.110
28 (C.5:12-1 et seq.).
29 (cf: P.L.2008, c.46, s.38)

30
31 18. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to
32 read as follows:

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

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

46 b. A developer of a non-residential project that, prior to July 17,
47 2008, has been referred to a planning board by the State, a governing
48 body, or other public agency for review pursuant to section 22 of
49 P.L.1975, c.291 (C. 40:55D-31) and that was subject to the payment

1 of a nonresidential development fee prior to the enactment of
2 P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of
3 any moneys paid that represent the difference between moneys
4 committed prior to July 17, 2008 and moneys paid on or after that
5 date.

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

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

21 e. **【Notwithstanding the provisions of subsections a., b., c., and**
22 **d. of this section, if, on the effective date of P.L.2009, c.90**
23 **(C.52:27D-489a et al.), a municipality that has returned all or a**
24 **portion of non-residential fees in accordance with subsection a. or b.**
25 **of this section shall be reimbursed from the funds available through**
26 **the appropriation made into the "New Jersey Affordable Housing**
27 **Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-**
28 **320.1) within 30 days of the municipality providing written notice to**
29 **the Council on Affordable Housing.】** (Deleted by amendment,
30 P.L. , c.) (pending before the Legislature as this bill)

31 f. A developer of a non-residential project that paid a fee
32 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
33 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
34 but prior to the effective date of P.L.2011, c.122, shall be entitled to
35 the return of those monies paid, provided that said monies have not
36 already been expended by the municipality on affordable housing
37 projects, and provided that the provisions of section 37 of P.L.2008,
38 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit
39 the imposition of a fee upon the developer of that non-residential
40 property. If moneys are eligible to be returned under this subsection,
41 a claim shall be submitted, in writing, to the same entity to which the
42 moneys were paid, within 120 days of the effective date of P.L.2011,
43 c.122. The entity to whom the funds were paid shall promptly review
44 all requests for returns, to ensure applicability of section 37 of
45 P.L.2008, c.46 (C.40:55D-8.6) and the fees paid shall be returned to
46 the claimant within 30 days of receipt of the claim for return.

47 (cf: P.L.2011, c.122, s.2)

1 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to
2 read as follows:

3 3. a. There is established in, but not of, the department a Site
4 Improvement Advisory Board, to devise statewide site improvement
5 standards pursuant to section 4 of **【this act】** P.L.1993, c.32
6 (C.40:55D-40.4). The board shall consist of the commissioner or his
7 designee, who shall be a non-voting member of the board, the
8 Director of the Division of Housing in the Department of Community
9 Affairs, who shall be a voting member of the board, and **【10】** nine
10 other voting members, to be appointed by the commissioner. The
11 other members shall include two professional planners, one of whom
12 serves as a planner for a governmental entity or whose professional
13 experience is predominantly in the public sector and who has worked
14 in the public sector for at least the previous five years and the other
15 of whom serves as a planner in private practice and has particular
16 expertise in private residential development and has been involved in
17 private sector planning for at least the previous five years, and one
18 representative each from:

- 19 (1) The New Jersey Society of Professional Engineers;
- 20 (2) The New Jersey Society of Municipal Engineers;
- 21 (3) The New Jersey Association of County Engineers;
- 22 (4) The New Jersey Federation of Planning Officials;
- 23 (5) **【The Council on Affordable Housing】** (Deleted by
24 amendment, P.L. , c. (pending before the Legislature as this bill);
- 25 (6) The New Jersey Builders' Association;
- 26 (7) The New Jersey Institute of Technology;
- 27 (8) The New Jersey State League of Municipalities.

28 b. Among the members to be appointed by the commissioner
29 who are first appointed, four shall be appointed for terms of two years
30 each, four shall be appointed for terms of three years each, and two
31 shall be appointed for terms of four years each. Thereafter, each
32 appointee shall serve for a term of four years. Vacancies in the
33 membership shall be filled in the same manner as original
34 appointments are made, for the unexpired term. The **【commission】**
35 board shall select a chair from among its members **【a chairman】**.
36 Members may be removed by the commissioner for cause.

37 c. Board members shall serve without compensation, but may be
38 entitled to reimbursement, from moneys appropriated or otherwise
39 made available for the purposes of this act, for expenses incurred in
40 the performance of their duties.

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

42
43 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read
44 as follows:

45 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

46 "Bonds" means any bonds, notes, interim certificates, debentures
47 or other obligations issued by a municipality, county, redevelopment

1 entity, or housing authority pursuant to P.L.1992, c.79 (C.40A:12A -
2 1 et al.).

3 "Comparable, affordable replacement housing" means newly-
4 constructed or substantially rehabilitated housing to be offered to a
5 household being displaced as a result of a redevelopment project, that
6 is affordable to that household based on its income under the
7 guidelines established by the **【Council on Affordable Housing in the**
8 **Department of Community Affairs】** New Jersey Housing and
9 Mortgage Finance Agency for maximum affordable sales prices or
10 maximum fair market rents, and that is comparable to the household's
11 dwelling in the redevelopment area with respect to the size and
12 amenities of the dwelling unit, the quality of the neighborhood, and
13 the level of public services and facilities offered by the municipality
14 in which the redevelopment area is located.

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

23 "Electric vehicle charging station" means an electric component
24 assembly or cluster of component assemblies designed specifically
25 to charge batteries within electric vehicles by permitting the transfer
26 of electric energy to a battery or other storage device in an electric
27 vehicle.

28 "Governing body" means the body exercising general legislative
29 powers in a county or municipality according to the terms and
30 procedural requirements set forth in the form of government adopted
31 by the county or municipality.

32 "Housing authority" means a housing authority created or
33 continued pursuant to this act.

34 "Housing project" means a project, or distinct portion of a project,
35 which is designed and intended to provide decent, safe and sanitary
36 dwellings, apartments or other living accommodations for persons of
37 **【low and moderate income】** low- and moderate-income; such work
38 or undertaking may include buildings, land, equipment, facilities and
39 other real or personal property for necessary, convenient or desirable
40 appurtenances, streets, sewers, water service, parks, site preparation,
41 gardening, administrative, community, health, recreational,
42 educational, welfare or other purposes. The term "housing project"
43 also may be applied to the planning of the buildings and
44 improvements, the acquisition of property, the demolition of existing
45 structures, the construction, reconstruction, alteration and repair of
46 the improvements and all other work in connection therewith.

47 "Parking authority" means a public corporation created pursuant
48 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et

1 seq.), and authorized to exercise redevelopment powers within the
2 municipality.

3 "Persons of **low and moderate income** low- and moderate-
4 income" means persons or families who are, in the case of State
5 assisted projects or programs, so defined by the **Council on**
6 **Affordable Housing in the Department of Community Affairs** New
7 Jersey Housing and Mortgage Finance Agency, or in the case of
8 federally assisted projects or programs, defined as of **"low and very**
9 **low income"** "low- and very low-income" by the United States
10 Department of Housing and Urban Development.

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

13 "Public electric vehicle charging station" means an electric vehicle
14 charging station located at a publicly available parking space.

15 "Public housing" means any housing for persons of **low and**
16 **moderate income** low- and moderate-income owned by a
17 municipality, county, the State or the federal government, or any
18 agency or instrumentality thereof.

19 "Public hydrogen fueling station" means publicly available
20 equipment to store and dispense hydrogen fuel to vehicles according
21 to industry codes and standards.

22 "Publicly assisted housing" means privately owned housing which
23 receives public assistance or subsidy, which may be grants or loans
24 for construction, reconstruction, conservation, or rehabilitation of the
25 housing, or receives operational or maintenance subsidies either
26 directly or through rental subsidies to tenants, from a federal, State
27 or local government agency or instrumentality.

28 "Publicly available parking space" means a parking space that is
29 available to, and accessible by, the public and may include on-street
30 parking spaces and parking spaces in surface lots or parking garages,
31 but shall not include: a parking space that is part of, or associated
32 with, a private residence; or a parking space that is reserved for the
33 exclusive use of an individual driver or vehicle or for a group of
34 drivers or vehicles, such as employees, tenants, visitors, residents of
35 a common interest development, or residents of an adjacent building.

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

42 "Redeveloper" means any person, firm, corporation or public body
43 that shall enter into or propose to enter into a contract with a
44 municipality or other redevelopment entity for the redevelopment or
45 rehabilitation of an area in need of redevelopment, or an area in need
46 of rehabilitation, or any part thereof, under the provisions of this act,
47 or for any construction or other work forming part of a redevelopment
48 or rehabilitation project.

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

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

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

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

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

44 "Redevelopment project" means any work or undertaking pursuant
45 to a redevelopment plan; such undertaking may include any
46 buildings, land, including demolition, clearance or removal of
47 buildings from land, equipment, facilities, or other real or personal
48 properties which are necessary, convenient, or desirable
49 appurtenances, such as but not limited to streets, sewers, utilities,

1 parks, site preparation, landscaping, and administrative, community,
2 health, recreational, educational, and welfare facilities, and zero-
3 emission vehicle fueling and charging infrastructure.

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

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

14 "Zero-emission vehicle" means a vehicle certified as a zero
15 emission vehicle pursuant to the California Air Resources Board zero
16 emission vehicle standards for the applicable model year, including
17 but not limited to, battery electric-powered vehicles and hydrogen
18 fuel cell vehicles.

19 "Zero-emission vehicle fueling and charging infrastructure"
20 means infrastructure to charge or fuel zero-emission vehicles,
21 including but not limited to, public electric vehicle charging stations
22 and public hydrogen fueling stations.

23 (cf: P.L.2021, c.168, s.1)

24
25 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to
26 read as follows:

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

31 (1) Plan, construct, own, and operate housing projects; maintain,
32 reconstruct, improve, alter, or repair any housing project or any part
33 thereof; and for these purposes, receive and accept from the State or
34 federal government, or any other source, funds or other financial
35 assistance;

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

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

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

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

47 (6) Cooperate with any other municipality, private, county, State
48 or federal entity to provide funds to the municipality or other
49 governmental entity and to homeowners, tenant associations,

1 nonprofit or private developers to acquire, construct, rehabilitate or
2 operate publicly assisted housing, and to provide rent subsidies for
3 persons of **low and moderate income** low- and moderate-income,
4 including the elderly, pursuant to applicable State or federal
5 programs;

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

11 (8) Cooperate with any State or federal entity to secure mortgage
12 assistance for any person of **low or moderate income** low- or
13 moderate-income;

14 (9) Provide technical assistance and support to nonprofit
15 organizations and private developers interested in constructing **low**
16 **and moderate income** low- and moderate-income housing;

17 (10) If it owns and operates public housing units, provide to the
18 tenants public safety services, including protection against substance
19 use disorder, and social services, including counseling and financial
20 management, in cooperation with other agencies;

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

23 b. All housing projects, programs and actions undertaken
24 pursuant to this act shall accord with the housing element of the
25 master plan of the municipality within which undertaken, and with
26 any fair share housing plan **filed by** of the municipality **with the**
27 **Council on Affordable Housing, based upon the council's criteria and**
28 **guidelines**, adopted pursuant to the "Fair Housing Act," P.L.1985,
29 c.222 (C.52:27D-301 et al.)**], whether or not the municipality has**
30 **petitioned for substantive certification of the plan**.

31 (cf: P.L.2017, c.131, s.176)

32
33 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to
34 read as follows:

35 10. A municipality's housing element shall be designed to achieve
36 the goal of access to affordable housing to meet present and
37 prospective housing needs, with particular attention to **low and**
38 **moderate income** low- and moderate-income housing, and shall
39 contain at least:

40 a. An inventory of the municipality's housing stock by age,
41 condition, purchase or rental value, occupancy characteristics, and
42 type, including the number of units affordable to **low and moderate**
43 **income** low- and moderate-income households and substandard
44 housing capable of being rehabilitated, and in conducting this
45 inventory the municipality shall have access, on a confidential basis
46 for the sole purpose of conducting the inventory, to all necessary
47 property tax assessment records and information in the assessor's
48 office, including but not limited to the property record cards;

1 b. A projection of the municipality's housing stock, including the
2 probable future construction of **low and moderate income** low- and
3 moderate-income housing, for the next ten years, taking into account,
4 but not necessarily limited to, construction permits issued, approvals
5 of applications for development and probable residential
6 development of lands;

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

10 d. An analysis of the existing and probable future employment
11 characteristics of the municipality;

12 e. A determination of the municipality's present and prospective
13 fair share for **low and moderate income** low- and moderate-income
14 housing and its capacity to accommodate its present and prospective
15 housing needs, including its fair share for **low and moderate**
16 **income** low- and moderate-income housing, as established pursuant
17 to section 3 of P.L. , c. (C.) (pending before the Legislature
18 as this bill);

19 f. A consideration of the lands that are most appropriate for
20 construction of **low and moderate income** low- and moderate-
21 income housing and of the existing structures most appropriate for
22 conversion to, or rehabilitation for, **low and moderate income** low-
23 and moderate-income housing, including a consideration of lands of
24 developers who have expressed a commitment to provide **low and**
25 **moderate income** low- and moderate-income housing; and

26 g. An analysis of the extent to which municipal ordinances and
27 other local factors advance or detract from the goal of preserving
28 multigenerational family continuity as expressed in the
29 recommendations of the Multigenerational Family Housing
30 Continuity Commission, adopted pursuant to paragraph (1) of
31 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).
32 (cf: P.L.2021, c.273, s.2)

33
34 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
35 read as follows:

36 1. When computing a municipal adjustment regarding available
37 land resources as part of the determination of a municipality's fair
38 share of affordable housing, the **Council on Affordable Housing**
39 municipality in filing a housing element and fair share plan pursuant
40 to subsection f. of section 3 of P.L. , c. (C.) (pending before
41 the Legislature as this bill) shall exclude from designating , and the
42 declaratory judgment process set forth pursuant to section 3 of P.L.
43 , c. (C.) (pending before the Legislature as this bill) shall
44 confirm was correctly excluded, as vacant land:

45 (a) any land that is owned by a local government entity that as of
46 January 1, 1997, has adopted, prior to the institution of a lawsuit
47 seeking a builder's remedy or prior to the filing of a petition for
48 substantive certification of a housing element and fair share plan, a

1 resolution authorizing an execution of agreement that the land be
2 utilized for a public purpose other than housing;

3 (b) any land listed on a master plan of a municipality as being
4 dedicated, by easement or otherwise, for purposes of conservation,
5 park lands or open space and which is owned, leased, licensed, or in
6 any manner operated by a county, municipality or tax-exempt,
7 nonprofit organization including a local board of education, or by
8 more than one municipality by joint agreement pursuant to P.L.1964,
9 c.185 (C.40:61-35.1 et seq.), for so long as the entity maintains such
10 ownership, lease, license, or operational control of such land;

11 (c) any vacant contiguous parcels of land in private ownership of
12 a size which would accommodate fewer than five housing units **【if**
13 **current standards of the council were applied】** based on appropriate
14 standards pertaining to housing density;

15 (d) historic and architecturally important sites listed on the State
16 Register of Historic Places or National Register of Historic Places
17 prior to the **【submission of the petition of substantive certification】**
18 date of filing a housing element and fair share plan pursuant to
19 section 3 of P.L. , c. (C.) (pending before the Legislature as
20 this bill);

21 (e) agricultural lands when the development rights to these lands
22 have been purchased or restricted by covenant;

23 (f) sites designated for active recreation that are designated for
24 recreational purposes in the municipal master plan; and

25 (g) environmentally sensitive lands where development is
26 prohibited by any State or federal agency.

27 No municipality shall be required to utilize for affordable housing
28 purposes land that is excluded from being designated as vacant land.
29 (cf: P.L.2008, c.46, s.39)
30

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

33 11. a. In adopting its housing element, the municipality may
34 provide for its fair share of **【low and moderate income】** low- and
35 moderate-income housing by means of any technique or combination
36 of techniques which provide a realistic opportunity for the provision
37 of the fair share. The housing element shall contain an analysis
38 demonstrating that it will provide such a realistic opportunity, and
39 the municipality shall establish that its land use and other relevant
40 ordinances have been revised to incorporate the provisions for **【low**
41 **and moderate income】** low- and moderate-income housing. In
42 preparing the housing element, the municipality shall consider the
43 following techniques for providing **【low and moderate income】** low-
44 and moderate-income housing within the municipality, as well as
45 such other appropriate techniques as have been established through
46 applicable precedent and may be **【published by the council or**
47 **proposed】** employed 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] low- and moderate-income units remain affordable to [low and moderate income] 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] 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] low- and moderate-income housing;

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

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

(8) Utilization of municipally generated funds toward the construction of [low and moderate income] 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] 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] 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, for the mentally ill, or for persons with head injuries, as those terms are defined in section 2 of P.L.1977, c.448 (C.30:11B-2), or in transitional housing, which will be affordable to persons of [low and moderate income] low- and moderate-income, and for which adequate measures to retain such

1 affordability pursuant to paragraph (3) of subsection a. of this section
2 are included in the housing element, those housing units shall be fully
3 credited **【as permitted under the rules of the council】** towards the
4 fulfillment of the municipality's fair share of **【low and moderate**
5 **income】** low- and moderate-income housing. A municipality shall
6 not credit transitional housing units towards more than 15 percent of
7 the municipality's fair share obligation.

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

16 g. A municipality **【which】** that has received **【substantive**
17 **certification from the council】** approval of its housing element and
18 fair share plan for the current round, and **【which】** that has actually
19 effected the construction of the affordable housing units it is
20 obligated to provide, may amend its affordable housing element or
21 zoning ordinances without **【the approval of the council】** losing
22 immunity from builder's remedy litigation.

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

28 i. **【The council, upon the application of a】** A municipality and
29 a developer **【,** may **【approve】** request a modification of a
30 compliance certification involving reduced affordable housing set-
31 asides or increased densities to ensure the economic feasibility of an
32 inclusionary development , if any such application demonstrates how
33 any shortfall in meeting the municipal fair share obligation will then
34 be addressed.

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

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

13 k. In the fourth round, and in subsequent rounds of affordable
14 housing obligations, a municipality shall be able to receive one credit
15 against its affordable housing obligation for each unit of low- or
16 moderate-income housing, and shall not receive bonus credit for any
17 particular type of low- or moderate-income housing, unless authority
18 to obtain bonus credit is expressly provided pursuant to this section,
19 or other sections of the "Fair Housing Act," P.L.1985, c.222
20 (C.52:27D-301 et al.). This subsection shall not be construed to limit
21 the ability of a municipality to receive a unit of credit for a low- or
22 moderate-income housing unit that is subject to affordability controls
23 that are scheduled to expire, but are extended in accordance with the
24 Uniform Housing Affordability Controls promulgated by the New
25 Jersey Housing and Mortgage Finance Agency, to the extent that this
26 affordability control extension would otherwise generate this credit.
27 As a part of a fair share plan and housing element adopted pursuant
28 to subsection f. of section 3 of P.L. , c. (C.) (pending before
29 the Legislature as this bill), a municipality shall:

30 (1) receive one unit of credit and one-half bonus credit for each
31 unit of low- or moderate-income housing in a community residence
32 for persons with head injuries, developmental disabilities, or mental
33 illness, as those terms are defined in section 2 of P.L.1977, c.448
34 (C.30:11B-2), or in transitional housing;

35 (2) receive one unit of credit and one-half bonus credit for each
36 unit of very low-income housing;

37 (3) receive one unit of credit and one-half bonus credit for each
38 unit of low- or moderate-income housing located within a 1/2-mile
39 radius, or one-mile radius for projects located in a Garden State
40 Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-
41 243), surrounding a New Jersey Transit Corporation, Port Authority
42 Transit Corporation, or Port Authority Trans-Hudson Corporation
43 rail, bus, or ferry station, including all light rail stations. For the
44 purpose of this subparagraph, the distance from the bus, rail, or ferry
45 station to a housing unit shall be measured from the closest point on
46 the outer perimeter of the station, including any associated park-and-
47 ride lot, to the closest point of the housing project property; and

48 (4) receive one unit of credit and one-half bonus credit for a unit
49 of age-restricted housing, provided that a bonus credit for age-

1 restricted housing shall not be applied to more than 10 percent of the
2 units of age-restricted housing constructed in a municipality that
3 count towards the municipality's affordable housing obligation for
4 any single 10-year round of affordable housing obligations.

5 1. A municipality may not satisfy more than 25 percent of the
6 affordable housing units, exclusive of any bonus credits, to address
7 its prospective need affordable housing obligation through the
8 creation of age-restricted housing. A municipality shall satisfy a
9 minimum of 50 percent of the actual affordable housing units,
10 exclusive of any bonus credits, created to address its prospective need
11 affordable housing obligation through the creation of housing
12 available to families with children and otherwise in compliance with
13 the requirements and controls established pursuant to section 21 of
14 P.L.1985, c.222 (C.52:27D-321).

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

16
17 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to
18 read as follows:

19 6. **【The council】** A municipality may take such measures as are
20 necessary to assure compliance with the adaptability requirements
21 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
22 including the inspection of those units which are newly constructed
23 and receive housing credit as provided under section 1 of P.L.2005,
24 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring
25 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No
26 housing unit subject to the provisions of section 5 of P.L.2005, c.350
27 (C.52:27D-123.15) and to the provisions of the barrier free subcode
28 adopted by the Commissioner of Community Affairs pursuant to the
29 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-
30 119 et seq.) shall be eligible for inclusion in a municipal fair share
31 plan unless the unit complies with the requirements set forth
32 thereunder. If any units for which credit was granted in accordance
33 with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are
34 found not to conform to the requirements of P.L.2005, c.350
35 (C.52:27D-311a et al.), 【the council may】 any party representing the
36 interests of households with disabilities may seek a modification to
37 the approval of the municipal fair share plan to require the
38 municipality to amend its fair share plan within 90 days of 【receiving
39 notice from the council】 such a finding, to address its fair share
40 obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the
41 event that the municipality fails to amend its fair share plan within
42 90 days of 【receiving such notice, the council may revoke
43 substantive certification】 such a finding, the municipality shall lose
44 immunity to a builder's remedy for the portion of its obligation that
45 is found not to conform to the requirements of P.L.2005, c.350
46 (C.52:27D-311a et al.).

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

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

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

28 a. Except as permitted pursuant to subsection g. of this section,
29 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
30 commissioner shall award grants or loans from this fund for housing
31 projects and programs in municipalities whose housing elements
32 have **【received substantive certification from the council,】** obtained
33 compliance certification pursuant to section 3 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), or in municipalities
35 receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.)
36 **【, in municipalities subject to a builder's remedy as defined in section**
37 **28 of P.L.1985, c.222 (C.52:27D-328), or in receiving municipalities**
38 **in cases where the council has approved a regional contribution**
39 **agreement and a project plan developed by the receiving**
40 **municipality】.**

41 Of those monies deposited into the "New Jersey Affordable
42 Housing Trust Fund" that are derived from municipal development
43 fee trust funds, or from available collections of Statewide non-
44 residential development fees, a priority for funding shall be
45 established for projects in municipalities that have **【petitioned the**
46 **council for substantive】** compliance certification.

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

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

9 c. For any period which the **[council]** commissioner may
10 approve, the commissioner may assist affordable housing programs
11 **[which]** that are **[not]** located in municipalities **[whose housing**
12 **elements have been granted substantive certification or which are not**
13 **in furtherance of a regional contribution agreement]** that have a
14 pending request for compliance certification; provided that the
15 affordable housing program will meet all or part of a municipal **[low**
16 **and moderate income]** low- and moderate-income housing
17 obligation.

18 d. Amounts deposited in the "New Jersey Affordable Housing
19 Trust Fund" shall be targeted to regions based on the region's
20 percentage of the State's **[low and moderate income]** low- and
21 moderate-income housing need as determined **[by the council]**
22 pursuant to the low- and moderate-income household growth over the
23 prior 10 years, as calculated pursuant to section 6
24 of P.L. , c. (C.) (pending before the Legislature as this bill).
25 Amounts in the fund shall be applied for the following purposes in
26 designated neighborhoods:

27 (1) Rehabilitation of substandard housing units occupied or to be
28 occupied by **[low and moderate income]** low- and moderate-income
29 households;

30 (2) Creation of accessory **[apartments]** dwelling units to be
31 occupied by **[low and moderate income]** low- and moderate-income
32 households;

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

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

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

47 (6) Assistance to a local housing authority, nonprofit or limited
48 dividend housing corporation, or association or a qualified entity

1 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
2 rehabilitation or restoration of housing units which it administers
3 which: (a) are unusable or in a serious state of disrepair; (b) can be
4 restored in an economically feasible and sound manner; and (c) can
5 be retained in a safe, decent, and sanitary manner, upon completion
6 of rehabilitation or restoration; and

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

18 e. Any grant or loan agreement entered into pursuant to this
19 section shall incorporate contractual guarantees and procedures by
20 which the division will ensure that any unit of housing provided for
21 **low and moderate income** low- and moderate-income households
22 shall continue to be occupied by **low and moderate income** low-
23 and moderate-income households for **at least 20 years** a period that
24 conforms to the requirements of subsection f. of section 21 of
25 P.L.1985, c.222 (C.52:27D-321) following the award of the loan or
26 grant, except that the division may approve a guarantee for a period
27 of less **than 20 years** duration where necessary to ensure project
28 feasibility.

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

46 g. In addition to other grants or loans awarded pursuant to this
47 section, and without regard to any limitations on such grants or loans
48 for any other purposes herein imposed, the commissioner shall

1 annually allocate such amounts as may be necessary in the
2 commissioner's discretion, and in accordance with section 3 of
3 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
4 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
5 287.1 et al.). Such rental assistance grants shall be deemed necessary
6 and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in
7 order to meet the housing needs of certain **low income** low-income
8 households who may not be eligible to occupy other housing
9 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

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

26 i. The commissioner may award or grant the amount of any
27 appropriation deposited in the "New Jersey Affordable Housing Trust
28 Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to
29 municipalities pursuant to the provisions of section 39 of P.L.2009,
30 c.90 (C.40:55D-8.8).
31 (cf: P.L.2017, c.131, s.200)

32
33 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to
34 read as follows:

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

39 a. Of the bond authority allocated to it under section 24 of
40 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a
41 reasonable period of time established by its board, no less than
42 **25%** 25 percent to be used in conjunction with housing to be
43 constructed or rehabilitated with assistance under **this act**
44 P.L.1985, c.222 (C.52:27D-301 et al.).

45 b. The agency shall to the extent of available funds, award
46 assistance to affordable housing programs located in municipalities
47 whose housing elements have **received substantive** obtained
48 compliance certification **from the council** , or which have been

1 subject to a builder's remedy **【**or which are in furtherance of a
2 regional contribution agreement approved by the council**】**. During
3 **【**the first 12 months from the effective date of this act and for**】** any
4 **【**additional**】** period which the **【**council**】** agency may approve, the
5 agency may assist affordable housing programs **【**which are not
6 located in municipalities whose housing elements have been granted
7 substantive certification or which are not in furtherance of a regional
8 contribution agreement**】** that have a pending request for compliance
9 certification; provided the affordable housing program will meet all
10 or in part a municipal **【**low and moderate income**】** low- and
11 moderate-income housing obligation.

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

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

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

23 (2) Rental programs including loans or grants for developments
24 containing **【**low and moderate income**】** low- and moderate-income
25 housing, moderate rehabilitation of existing rental housing,
26 congregate care and retirement facilities;

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

29 (4) Other housing programs for **【**low and moderate income**】** low-
30 and moderate-income housing, including infrastructure projects
31 directly facilitating the construction of **【**low and moderate income**】**
32 low- and moderate-income housing; and

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

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

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

43 e. The agency shall establish procedures and guidelines
44 governing the qualifications of applicants, the application procedures
45 and the criteria for awarding grants and loans for affordable housing
46 programs and the standards for establishing the amount, terms and
47 conditions of each grant or loan.

1 f. **【In consultation with the council, the】** The agency shall
 2 establish requirements and controls to **【insure】** ensure the
 3 maintenance of housing assisted under **【this act】** P.L.1985, c.222
 4 (C.52:27D-301 et al.) as affordable to **【low and moderate income】**
 5 low- and moderate-income households for a period of not less than
 6 **【20】** 30 years; provided that the agency may establish a shorter
 7 period of at least 10 years for accessory dwelling units or units within
 8 mobile home parks, upon a determination that the economic
 9 feasibility of the program is jeopardized by the requirement and the
 10 public purpose served by the program outweighs the shorter period ,
 11 and that the requirements and controls shall, at a minimum, be
 12 consistent with the controls as in effect immediately prior to the
 13 effective date of P.L. , c. (C.) (pending before the Legislature
 14 as this bill), including, but not limited to, any requirements
 15 concerning the bedroom distributions, affordability averages, and
 16 affirmative marketing. The controls may include, among others,
 17 requirements for recapture of assistance provided pursuant to **【this**
 18 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return
 19 on equity in the event of failure to meet the requirements of the
 20 program. With respect to rental housing financed by the agency
 21 pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et al.) or
 22 otherwise which promotes the provision or maintenance of **【low and**
 23 **moderate income】** low- and moderate-income housing, the agency
 24 may waive restrictions on return on equity required pursuant to
 25 P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale
 26 of the property or of any interest in the property or sale of any interest
 27 in the housing sponsor. The agency shall promulgate updated
 28 regulations no later than nine months following the effective date of
 29 P.L. , c. (C.) (pending before the Legislature as this bill).
 30 All parties may continue to rely on regulations previously adopted by
 31 the agency until new rules and regulations are adopted by the agency.

32 g. The agency may establish affordable housing programs
 33 through the use or establishment of subsidiary corporations or
 34 development corporations as provided in P.L.1983, c.530 (C.55:14K-
 35 1 et seq.). The subsidiary corporations or development corporations
 36 shall be eligible to receive funds provided under **【this act】** P.L.1985,
 37 c.222 (C.52:27D-301 et al.) for any permitted purpose.

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

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

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

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

1 full extent such credits are permitted to be allocated under federal
2 law, including allocations of **【4】** four percent or **【9】** nine percent
3 federal **【low income】** low-income tax credits, and including
4 allocations allowable for partial credits. The affordable portion of
5 any mixed income or mixed use development that is part of a fair
6 share housing plan **【approved by the council】** that has obtained
7 compliance certification, or a court-approved judgment of repose or
8 compliance, including, but not limited to, a development that has
9 received a density bonus, shall be permitted to receive allocations of
10 **【low income】** low-income tax credits, provided that the applicant can
11 conclusively demonstrate that the market rate residential or
12 commercial units are unable to internally subsidize the affordable
13 units, and the affordable units are developed contemporaneously with
14 the commercial or market rate residential units.
15 (cf: P.L.2008, c.46, s.19)

16
17 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to
18 read as follows:

19 7. **【The council shall coordinate and review the housing elements**
20 **as filed pursuant to section 11 of P.L.1985, c.222 (C.52:27D-311),**
21 **and the housing activities under section 20 of P.L.1985, c.222**
22 **(C.52:27D-320), at least once every three years, to】** Housing
23 elements and fair share plans adopted pursuant to section 3 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill) shall ensure
25 that at least 13 percent of the housing units made available for
26 occupancy by low-income and **【moderate income】** moderate-income
27 households to address a municipality's prospective need obligation
28 will be reserved for occupancy by very low income households, as
29 that term is defined pursuant to section 4 of P.L.1985, c.222
30 (C.52:27D-304). Nothing in this section shall require that a specific
31 percentage of the units in any specific project be reserved as very
32 **【low income】** low-income housing; provided, however, that a
33 municipality shall not receive bonus credits for the provision of
34 housing units reserved for occupancy by very **【low income】** low-
35 income households unless the 13 percent target has been exceeded
36 within that municipality **【.** The council shall coordinate all efforts to
37 meet the goal of this section in a manner that will result in a balanced
38 number of housing units being reserved for very low income
39 households throughout all housing regions. For the purposes of this
40 section, housing activities under section 20 of P.L.1985, c.222
41 (C.52:27D-320) shall include any project-based assistance provided
42 from the "New Jersey Affordable Housing Trust Fund" pursuant to
43 P.L.2004, c.140 (C.52:27D-287.1 et al.), regardless of whether the
44 housing activity is counted toward the municipal obligation under the
45 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) **】**, and that
46 the agency shall update the regulations adopted pursuant to section
47 21 of P.L.1985, c.222 (C.52:27D-321) to replace any requirements
48 for very low-income housing inconsistent with the percentages and

1 definitions established pursuant to P.L. , c. (C.) (pending
2 before the Legislature as this bill) with the percentage and definition
3 specified in this section.

4 (cf: P.L.2008, c.46, s.7)

5
6 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
7 read as follows:

8 8. a. **【The council may authorize a】** A municipality that is in the
9 process of seeking compliance certification, has 【petitioned for
10 substantive】 obtained compliance certification, or that has been so
11 authorized by a court of competent jurisdiction, and which has
12 adopted a municipal development fee ordinance shall be authorized
13 to impose and collect development fees from developers of
14 residential property, in accordance with rules promulgated by the
15 **【council】** department. Each amount collected shall be deposited and
16 shall be accounted for separately, by payer and date of deposit.

17 A municipality may not spend or commit to spend any affordable
18 housing development fees, including Statewide non-residential fees
19 collected and deposited into the municipal affordable housing trust
20 fund, without first obtaining the **【council's】** approval of the
21 expenditure as part of its compliance certification or by the
22 department. A municipality shall include in its housing element and
23 fair share plan adopted pursuant to section 3 of P.L. , c. (C.)
24 (pending before the Legislature as this bill) a spending plan for
25 current funds in the municipal affordable housing trust fund and
26 projected funds through the current round. Review of that spending
27 plan for consistency with applicable law and the municipality's
28 Housing Element and Fair Share Plan shall be part of the process
29 specified in section 3 of P.L. , c. (C.) (pending before the
30 Legislature as this bill). The 【council】 department shall promulgate
31 updated regulations no later than nine months following the effective
32 date of P.L. , c. (C.) (pending before the Legislature as this
33 bill) regarding the establishment, administration, and enforcement of
34 the expenditure of affordable housing development fees by
35 municipalities, which shall include establishing an expedited process
36 for approving spending plan expenditures for emergent opportunities
37 to create affordable housing after a municipality has obtained
38 compliance certification and procedures for monitoring the collection
39 and expenditure of trust funds. The department shall develop and
40 publish on the department's Internet website a detailed summary of
41 the municipal affordable housing trust fund expenditures for each
42 municipality, and shall update each summary on an annual basis.
43 Municipalities may continue to rely on regulations on development
44 fees and spending plans previously adopted by the council until new
45 rules and regulations are adopted by the department. The 【council】
46 department shall have exclusive jurisdiction regarding the
47 enforcement of these regulations, provided that any municipality
48 which is not in compliance with the regulations adopted by the

1 **【council】 department** may be subject to forfeiture of any or all funds
2 remaining within its municipal trust fund. Any funds so forfeited
3 shall be deposited into the "New Jersey Affordable Housing Trust
4 Fund" established pursuant to section 20 of P.L.1985, c.222
5 (C.52:27D-320).

6 b. A municipality shall deposit all fees collected, whether or not
7 such collections were derived from fees imposed upon non-
8 residential or residential construction into a trust fund dedicated to
9 those purposes as required under this section, and such additional
10 purposes as may be approved by the **【council】 department**.

11 c. (1) A municipality may only spend development fees for an
12 activity approved by the **【council】 department** to address the
13 municipal fair share obligation, or approved as part of compliance
14 certification.

15 (2) Municipal development trust funds shall not be expended
16 unless the municipality has immunity from builder's remedy
17 litigation at the time of the expenditure, and shall not be expended:

18 (a) to reimburse municipalities for activities which occurred prior
19 to the authorization of a municipality to collect development fees; or

20 (b) (i) on administrative costs, attorney fees or court costs to
21 obtain a judgment of repose, or compliance certification; (ii) to
22 contest a determination of the municipality's fair share obligation; or
23 (iii) on costs of the municipality or any challenger in connection to a
24 challenge to the municipality's obligation, housing element, or fair
25 share plan.

26 (3) A municipality shall set aside a portion of its development fee
27 trust fund for the purpose of providing affordability assistance to
28 **【low and moderate income】 low- and moderate-income** households
29 in affordable units included in a municipal fair share plan, in
30 accordance with rules of the **【council】 department**.

31 (a) Affordability assistance programs may include down payment
32 assistance, security deposit assistance, low interest loans, common
33 maintenance expenses for units located in condominiums, rental
34 assistance, and any other program authorized by the **【council】**
35 department.

36 (b) Affordability assistance to households earning 30 percent or
37 less of median income may include buying down the cost of **【low**
38 **income】 low-income** units in a municipal fair share plan to make
39 them affordable to households earning 30 percent or less of median
40 income. The use of development fees in this manner shall not entitle
41 a municipality to bonus credits except as may **【be provided by the**
42 **rules of the council】 otherwise be allowed by applicable precedent**.

43 (4) A municipality may contract with a private or public entity to
44 administer any part of its housing element and fair share plan,
45 including the requirement for affordability assistance, or any
46 program or activity for which the municipality expends development
47 fee proceeds, in accordance with rules of the **【council】 department**.

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the **【council】 department**. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

This section shall not apply to the collection of a Statewide development fee imposed upon non-residential development pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 **【et seq.】** through C.40:55D-8.7) by the State Treasurer, when such collection is not authorized to be retained by a municipality.
(cf: P.L.2008, c.46, s.8)

31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to read as follows:

10. The **【council】 department** shall maintain on its Internet website, and also publish on **【a regular】** an annual basis, an up-to-date municipal status report **【concerning the petitions for substantive certification of each municipality that has submitted to the council's jurisdiction, and shall collect and publish】** based on its collection and publication of information concerning the number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, 【rental units maintained, and the number of housing units transferred or sold within the previous 12-month period】 and residential and non-residential development fees collected and expended. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of

1 bedrooms, and whether occupancy is reserved for families, senior
2 citizens, or other special populations. **【**No later than 60 months after
3 the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the
4 council shall require each municipality, as a condition of substantive
5 certification, to provide, in a standardized electronic media format as
6 determined by the council, the details of the fair share plan as adopted
7 by the municipality and approved by the council. The council shall
8 publish and maintain such approved plans on its website.**】**
9 (cf: P.L.2008, c.46, s.10)

10
11 32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended to
12 read as follows:

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

31 b. Subject to the provisions of subsection d. of this section, a
32 developer of a project consisting of newly-constructed residential
33 units being financed in whole or in part with State funds, including,
34 but not limited to, transit villages designated by the Department of
35 Transportation and units constructed on State-owned property,
36 including but not limited to property owned by the State as of the
37 effective date of P.L. , c. (C.) (pending before the Legislature
38 as this bill) and subsequently sold, shall be required to reserve at least
39 20 percent of the residential units constructed for occupancy by **【**low
40 or moderate income**】** low- or moderate-income households, as those
41 terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304),
42 with affordability controls as required under the rules of the **【**council,
43 unless the municipality in which the property is located has received
44 substantive certification from the council and such a reservation is
45 not required under the approved affordable housing plan, or the
46 municipality has been given a judgment of repose or a judgment of
47 compliance by the court, and such a reservation is not required under
48 the approved affordable housing plan**】** agency.

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

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

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

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

44 d. Notwithstanding the provisions of subsection b. of this
45 section, or any other law or regulation to the contrary, for purposes
46 of mixed use projects or qualified residential projects in which a
47 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-
48 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90
49 (C.34:1B-209.3), or both, an "eligible municipality," as defined in

1 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of
2 deciding the percentage of newly-constructed residential units within
3 the project, up to 20 percent of the total, required to be reserved for
4 occupancy by **low or moderate income** low- or moderate-income
5 households. For a mixed use project or a qualified residential project
6 that has received preliminary or final site plan approval prior to the
7 effective date of P.L.2011, c.89, the percentage shall be deemed to
8 be the percentage, if any, of units required to be reserved for **low or**
9 **moderate income** low- or moderate-income households in
10 accordance with the terms and conditions of such approval.
11 (cf: P.L.2011, c.89, s.5)

12

13 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to
14 read as follows:

15 3. As used in this act:

16 "Affordable Home Ownership Opportunities Bonds" means any
17 bonds of the New Jersey Housing and Mortgage Finance Agency that
18 provide funds to facilitate the provisions of this act.

19 "Agency" means the New Jersey Housing and Mortgage Finance
20 Agency.

21 "Annual income" means total income, from all sources, during the
22 last full calendar year preceding the filing of an application for a loan
23 pursuant to this act.

24 "Bonds" means bonds, notes or any other form of evidence of
25 indebtedness of the agency, bearing either a fixed rate or a variable
26 rate of interest, issued by the agency.

27 "Eligible project" means a project for the creation of low or
28 moderate income housing which meets the standards of eligibility for
29 loans under the program created by this act.

30 "Eligible purchaser" means a purchaser of a dwelling unit in an
31 eligible project to whom a loan may be made under the program
32 pursuant to section 5 of this act.

33 "Fund" means the Affordable Home Ownership Opportunities
34 Fund established by section 5 of this act.

35 "Housing region" means a housing region as defined in subsection
36 b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
37 304) and determined **by the Council on Affordable Housing**
38 **pursuant to section 7 of that act, P.L.1985, c.222 (C.52:27D-307)**
39 pursuant to subsection b. of section 6 of P.L. , c. (C.) (pending
40 before the Legislature as this bill).

41 "Local enforcement authority" means any officer or agency of
42 local government responsible for the implementation or enforcement
43 of land-use and building regulations established by or pursuant to the
44 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-
45 119 et seq.) or the "Municipal Land Use Law," P.L.1975, c.291
46 (C.40:55D-1 et seq.).

1 "Low income" means a gross annual household income equal to
2 50% or less of the median gross annual household income for
3 households of the same size within the relevant housing region.

4 "Moderate income" means a gross annual household income equal
5 to not more than 80%, but more than 50% of the median gross annual
6 household income for households of the same size within the relevant
7 housing region.

8 "Program" means the Affordable Home Ownership Opportunities
9 Program created by this act.

10 "Qualified nonprofit organization" means any corporation or
11 association of persons organized under Title 15A of the New Jersey
12 Statutes, having for its principal purpose, or as a purpose ancillary to
13 its principal purpose, the improvement of realistic opportunities for
14 low income and moderate income housing, as defined pursuant to the
15 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), being
16 within the description of section 501(c)(3) of the United States
17 Internal Revenue Code (26 U.S.C. 501(c)(3)), having been
18 determined by the agency to be a bona fide organization not under
19 the effective control of any for-profit organization or governmental
20 entity, and appearing capable, by virtue of past activities,
21 qualifications of staff or board, or other features, of furthering the
22 purposes of this act.

23 "Substantial rehabilitation" means repair, reconstruction or
24 renovation which (1) costs in excess of 60% of the fair market value
25 of a rehabilitated dwelling after such repair, reconstruction or
26 renovation, or (2) renders a previously vacant and uninhabitable
27 dwelling safe, sanitary and decent for residential purposes, or (3)
28 converts to safe, sanitary and decent residential use a structure
29 previously in non-residential use.

30 (cf: P.L.1995, c.343, s.3)

31

32 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to
33 read as follows:

34 7. A project of new construction or substantial rehabilitation by
35 a nonprofit organization shall be eligible for a loan under this act if
36 (1) the homes to be constructed or substantially rehabilitated under
37 the project are located within an identifiable neighborhood in which
38 median family income does not exceed the current standard of
39 "moderate income" pursuant to the contemporaneous standards [of
40 the Council on Affordable Housing] established pursuant to the "Fair
41 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the homes
42 to be constructed or substantially rehabilitated under the project are
43 sufficient in number and located on the same or contiguous parcels
44 of land or within such proximity to each other as to render the cost
45 per unit of housing practicable for acquisition by lower-income
46 purchasers; and (3) each home constructed or substantially
47 rehabilitated within the project will conform to all requirements of
48 the State Uniform Construction Code, except as to the waiver of any

1 fee or other requirement pursuant to subsection b. of section 9 of this
2 act.
3 (cf: P.L.1995, c.343, s.7)

4
5 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to
6 read as follows:

7 3. As used in this act:

8 "Agency" means the New Jersey Housing and Mortgage Finance
9 Agency.

10 "Annual income" means total income, from all sources, during the
11 last full calendar year preceding the filing of an application for a loan
12 pursuant to this act.

13 "Bonds" means bonds, notes or any other form of evidence of
14 indebtedness of the agency, bearing either a fixed rate or a variable
15 rate of interest, issued by the agency.

16 "Eligible project" means a project undertaken by a qualified
17 housing sponsor to create housing for shared occupancy by seniors
18 or persons with disability of low or moderate income, whether for
19 home ownership or rental, which meets the standards of eligibility
20 for loans under the program created by section 4 of P.L.1998, c.128
21 (C.55:14K-75).

22 "Eligible purchaser" means a purchaser of a dwelling unit in an
23 eligible project who fulfills the definition of a senior or person with
24 disability pursuant to this section, is of low or moderate income and
25 to whom a loan may be made under the program pursuant to section
26 4 of P.L.1998, c.128 (C.55:14K-75).

27 "Fund" means the Senior and Disabled Cooperative Housing
28 Incentive Fund established by section 6 of P.L.1998, c.128
29 (C.55:14K-77).

30 "Housing region" means a housing region as defined in subsection
31 b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and determined
32 **【by the Council on Affordable Housing pursuant to section 7 of**
33 **P.L.1985, c.222 (C.52:27D-307)】**pursuant to subsection b. of section
34 6 of P.L. , c. (C.) (pending before the Legislature as this
35 bill).

36 "Low income" means a gross annual household income equal to
37 50% or less of the median gross annual household income for
38 households of the same size within the relevant housing region.

39 "Moderate income" means a gross annual household income equal
40 to not more than 80%, but more than 50% of the median gross annual
41 household income for households of the same size within the relevant
42 housing region.

43 "Person with disability" means any person who is 18 years of age
44 or older and who fulfills the definition of having a "disability"
45 pursuant to section 3 of the "Americans with Disabilities Act of
46 1990," 42 U.S.C. s.12102).

47 "Program" means the New Jersey Senior and Disabled
48 Cooperative Housing Finance Incentive Program created by
49 P.L.1998, c.128 (C.55:14K-72 et seq.).

1 "Qualified housing sponsor" means any corporation or association
2 of persons organized under the New Jersey Statutes, or any other
3 corporation having for one of its purposes the improvement of
4 realistic opportunities for low income and moderate income housing,
5 as defined pursuant to the "Fair Housing Act," P.L.1985, c.222
6 (C.52:27D-301 et al.), and appearing capable, by virtue of past
7 activities, qualifications of staff or board, or other features, of
8 furthering the purposes of P.L.1998, c.128 (C.55:14K-72 et seq.).

9 "Retrofitting" means renovating or remodeling an existing
10 residential or non-residential structure to allow for cooperative
11 living.

12 "Senior" means an individual who is 55 years of age or older.

13 "Substantial rehabilitation" means repair, reconstruction or
14 renovation which (1) costs in excess of 60% of the fair market value
15 of a rehabilitated dwelling after such repair, reconstruction or
16 renovation, or (2) renders a previously vacant and uninhabitable
17 dwelling safe, sanitary and decent for residential purposes or (3)
18 converts to safe, sanitary and decent residential use a structure
19 previously in non-residential use.

20 (cf: P.L.1998, c.128, s.3)

21
22 36. (New section) a. The Commissioner of Community Affairs
23 shall, in consultation with the Administrative Director of the Courts
24 and the Executive Director of the New Jersey Housing and Mortgage
25 Finance Agency, adopt, pursuant to the "Administrative Procedure
26 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months
27 after the effective date of P.L. , c. (C.) (pending before the
28 Legislature as this bill), such transitional rules and regulations as
29 necessary for the implementation of P.L. , c. (C.) (pending
30 before the Legislature as this bill), including for the identification of
31 any vestigial duties of the Council on Affordable Housing and for the
32 transfer of those duties within the Department of Community Affairs
33 to the extent that those duties are not otherwise assumed, pursuant to
34 P.L. , c. (C.) (pending before the Legislature as this bill), by
35 municipalities, the obligation special masters, or the Affordable
36 Housing Dispute Resolution Program.

37 b. The Executive Director of the New Jersey Housing and
38 Mortgage Finance Agency shall adopt, pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.), no later than nine months after the effective date of
41 P.L. , c. (C.) (pending before the Legislature as this bill),
42 rules and regulations to update the Uniform Housing Affordability
43 Controls as required pursuant to the "Fair Housing Act," P.L.1985,
44 c.222 (C.52:27D-301 et al.). As part of updating the Uniform
45 Housing Affordability Controls, the agency shall set rules
46 establishing a sliding scale for deed restrictions in housing
47 developments based on the percentage of affordable units set aside in
48 a given project. The sliding scale shall provide that projects with a
49 lower percentage of affordable units have a longer required deed

1 restriction and projects with a higher percentage of affordable units
2 have a shorter required deed restriction, provided that all projects
3 shall have a minimum deed restriction of 30 years. If the low- or
4 moderate-income units consist of 20 percent or fewer of the units in
5 a development project, then the deed restriction applied to those units
6 shall be no less than 50 years. The sliding scale shall not apply to
7 accessory dwelling units or mobile home parks, or 100 percent
8 affordable developments or other developments assisted by State or
9 federal funding, or both.

10
11 37. The following sections are repealed:

12 Section 5 of P.L.1985 c.222 (C.52:27D-305);
13 Section 6 of P.L.1985, c.222 (C.52:27D-306);
14 Section 7 of P.L.1985, c.222 (C.52:27D-307);
15 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);
16 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);
17 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);
18 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);
19 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);
20 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
21 Section 8 of P.L.1985, c.222 (C.52:27D-308);
22 Section 9 of P.L.1985, c.222 (C.52:27D-309);
23 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);
24 Section 12 of P.L.1985, c.222 (C.52:27D-312);
25 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
26 Section 14 of P.L.1985, c.222 (C.52:27D-314);
27 Section 15 of P.L.1985, c.222 (C.52:27D-315);
28 Section 16 of P.L.1985, c.222 (C.52:27D-316);
29 Section 17 of P.L.1985, c.222 (C.52:27D-317);
30 Section 18 of P.L.1985, c.222 (C.52:27D-318);
31 Section 19 of P.L.1985 c.222 (C.52:27D-319);
32 Section 22 of P.L.1985, c.222 (C.52:27D-322);
33 Section 26 of P.L.1985, c.222 (C.52:27D-326);
34 Section 28 of P.L.1985, c.222 (C.52:27D-328); and
35 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

36
37 38. a. There is appropriated to the Affordable Housing Dispute
38 Resolution Program, established pursuant to subsection a. of section
39 5 of P.L. , c. (C.) (pending before the Legislature as this
40 bill), from the General Fund \$12,000,000 for the purposes of carrying
41 out its responsibilities for the fourth round of affordable housing
42 obligations, as established pursuant to section 5 of
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44 b. There is appropriated to the Administrative Director of the
45 Courts for use by the obligation special masters, appointed pursuant
46 to subsection b. of section 3 of P.L. , c. (C.) (pending before
47 the Legislature as this bill), from the General Fund, \$4,000,000 for
48 the purposes of carrying out responsibilities of the obligation special
49 masters for the fourth round of affordable housing obligations, as

1 established pursuant to section 7 of P.L. , c. (C.) (pending
2 before the Legislature as this bill).

3
4 39. This act shall take effect immediately, and shall apply to each
5 new round of affordable housing obligations that begins following
6 enactment.

7
8
9 STATEMENT

10
11 This bill would abolish the Council on Affordable Housing
12 (COAH), initially established by the "Fair Housing Act," and would
13 establish a process to enable a municipality to determine its own
14 present and prospective fair share affordable housing obligation
15 based on the formulas established in the bill, as calculated by three
16 court-appointed obligation special masters, representing the
17 northern, central, and southern areas of the State. In advance of the
18 fourth, ten-year round of affordable housing obligations, beginning
19 on July 1, 2025, the bill requires each obligation special master to
20 complete these calculations, and provide for their publication, on or
21 before November 15, 2024.

22 The bill permits a municipality to diverge from the obligation
23 special master's calculations in determining its obligation, in case
24 local factors exist that make the special master's calculations
25 unreasonable. In advance of the fourth round, the bill requires a
26 municipality to adopt its obligation by binding resolution, on or
27 before January 31, 2025, in order to be assured of protection from a
28 builder's remedy lawsuit, as defined in the bill, through which a
29 municipality may otherwise be compelled to permit development,
30 when the fourth round begins. If the municipality meets this
31 deadline, then the municipality's determination of its obligation
32 would be established by default, without any approval, beginning on
33 February 28, 2025, as the municipality's obligation for the fourth
34 round. However, if a challenge is filed with the "Affordable Housing
35 Dispute Resolution Program" ("program"), established in the bill,
36 prior to February 1, 2025, the program would be required to facilitate
37 a resolution of the dispute prior to April 1, 2025.

38 The bill requires a municipality to establish a "housing element"
39 to encompass its obligation, and a fair share plan to meet its
40 obligation, in advance of the fourth round, and propose necessary
41 changes to associated ordinances, on or before June 30, 2025, in order
42 to be assured of protection from a builder's remedy lawsuit.

43 A municipality would be required to submit its adopted fair share
44 plan and housing element to the program through the program's
45 publicly accessible Internet website. The bill permits an interested
46 party to initiate a challenge to a municipal fair share plan and housing
47 element, if submitted through the program on or before August 31,
48 2025. The program would facilitate communication over the
49 challenge, and provide the municipality until November 30, 2025 to

1 commit to revising its fair share plan and housing element in response
2 to the challenge, or provide an explanation as to why it will not make
3 all or the requested changes, or both. The bill requires municipalities
4 to adopt associated changes to municipal ordinances on or before the
5 end of January 2026. If a municipality fails to meet these deadlines,
6 then the immunity of the municipality from builder's remedy
7 litigation would end unless the program determines that the
8 municipality's immunity shall be extended. If a municipality fails to
9 adhere to any of these deadlines due to circumstances beyond the
10 municipality's control, the bill directs the program to permit a grace
11 period for the municipality to come into compliance with the
12 timeline, the length of which, and effect of which on later deadlines,
13 would be determined on a case-by-case basis.

14 After providing immunity, the bill also authorizes the program to
15 subsequently terminate immunity under certain circumstances if it
16 becomes apparent that the municipality is not determined to come
17 into constitutional compliance. The municipality would still be
18 permitted to seek immunity from a builder's remedy by initiating an
19 action in Superior Court. A court would not grant a builder's remedy
20 to a plaintiff in exclusionary zoning litigation during certain
21 timeframes. The deadlines for subsequent 10-year rounds of
22 affordable housing obligations would conform to the dates
23 established in the bill for the fourth round.

24 In any challenge to a municipality's determination of its
25 affordable housing obligation, or to its fair share plan and housing
26 element, the bill requires the program to apply an objective
27 assessment standard to determine whether or not the municipality's
28 obligation determination, or its fair share plan and housing element,
29 fails to comply with the requirements of the bill. Further, the
30 challenger would be required to provide the basis for its challenge
31 based on applicable law, and the program would have the power to
32 dismiss challenges that do not provide such a basis.

33 All parties would be required to bear their own fees and costs for
34 proceedings within the program. A determination by the program as
35 to municipal obligations or compliance certification would be
36 considered a final agency decision, subject to review by the Appellate
37 Division.

38 The Chief Justice of the Supreme Court would appoint an odd
39 number of at least three and no more than seven members to the
40 program established by the bill, consisting of retired and on recall
41 judges, or other qualified experts. The members and employees of
42 the program would be considered State officers and employees for
43 the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971,
44 c.182 (C.52:13D-12 et seq.). Administrative Director of the Courts
45 would also establish procedures for the purpose of efficiently
46 resolving circumstances in which the program is unable to address a
47 dispute over compliance certification within the time limitations
48 established in the bill. As a part of these procedures, in order to
49 facilitate an appropriate level of localized control of affordable

1 housing decisions, for each vicinage, the bill directs the Chief Justice
2 of the Supreme Court to designate a Superior Court judge who sits
3 within the vicinage, or a retired judge who, during his or her tenure
4 as a judge, served within the vicinage, to serve as county level
5 housing judge to resolve disputes over the compliance, of fair share
6 plans and housing elements of municipalities within their county,
7 with the "Fair Housing Act," when those disputes are not be resolved
8 within the deadlines established in the bill. The Administrative
9 Director of the Courts would adopt and apply a Code of Ethics for
10 the program and county level housing judges modeled on the Code
11 of Judicial Conduct of the American Bar Association, adopted by the
12 State Supreme Court, and may establish additional more restrictive
13 ethical standards in order to meet the specific needs of the program
14 and of county level housing judges.

15 Each municipality's determination of its fair share obligation
16 would be made through the guidance of the preliminary findings of
17 three obligation special masters, also appointed by the Chief Justice
18 of the Supreme Court, representing each of the northern, central, and
19 southern areas of the State. For the purposes of the bill, the
20 boundaries of the northern area would correspond with the
21 boundaries of the affordable housing regions 1 and 2, the central area
22 would correspond with the boundaries of affordable housing regions
23 3 and 4, and the southern area would correspond with affordable
24 housing regions 5 and 6. No later than November 15 of the year prior
25 to the year when a new round of housing obligations begins, the bill
26 requires each obligation special master to calculate regional need and
27 municipal present and prospective obligations in accordance with
28 formulas established in the bill. The calculations of each obligation
29 special master would be made publicly available for municipalities
30 to use in determining their present and prospective obligations.

31 Each obligation special master would determine each
32 municipality's fair share obligation by applying the methods used by
33 the Superior Court for the third round, as summarized in the bill. The
34 obligation special master would determine its present need obligation
35 by estimating the existing deficient housing currently occupied by
36 low-and moderate- income households within the municipality.

37 Each obligation special master would next determine the regional
38 prospective need, upon which to base the municipal obligation, by
39 estimating the regional growth of low- and moderate-income
40 households during the housing round at issue. The bill would
41 simplify the regional need estimation from the processes used in
42 previous rounds in order to ease the administrative burden that has
43 been associated with this process. First, projected household change
44 for a 10-year round in a region would be estimated by establishing
45 the household change experienced in the region between the most
46 recent federal decennial census, and the second-most recent federal
47 decennial census. Although this relies on historical data, recent
48 household change in a region is relevant to estimating future
49 household change and associated housing need. This household

1 change would be divided by 2.5 to estimate the number of low- and
2 moderate-income homes needed to address population change in the
3 region, thereby determining the regional prospective need for the 10-
4 year round.

5 After determining regional prospective need, the obligation
6 special master would determine each municipality's fair share
7 prospective obligation of that regional prospective need. To do this,
8 an obligation special master would first determine whether a
9 municipality is a qualified urban aid municipality, and if so, the
10 municipality would not have a prospective need obligation.

11 If the municipality is not a qualified urban aid municipality, the
12 obligation special master would be required to calculate three factors
13 necessary for the prospective fair share determination. First, the
14 obligation special master would calculate the equalized
15 nonresidential valuation factor, representing the municipality's share
16 of the regional change in the value of nonresidential property. In
17 prior rounds, this calculation, concerning nonresidential (commercial
18 and industrial) property values, has been adopted as a representation
19 of a municipality's employment potential. Data available from the
20 Division of Local Government Services in the Department of
21 Community Affairs (DCA) would be used for this calculation. Next,
22 an income capacity factor would be determined, using a formula
23 comparable to one used in prior rounds to estimate the municipality's
24 ability to absorb low- and moderate-income households. The
25 municipality's land capacity factor would then be determined,
26 representing the municipality's relative share of undeveloped land,
27 available to accommodate development, using data made available
28 by the Department of Environmental Protection. The average of
29 these three factors would be determined and multiplied by the
30 regional prospective need to determine the municipality's gross
31 prospective need.

32 Finally, each obligation special master would adjust for secondary
33 sources of housing supply and demand by first calculating
34 demolitions of low- and moderate-income housing, and housing
35 creation through residential conversions. Each obligation special
36 master would subtract a municipality's share of conversions from the
37 sum of each municipality's allocated share of gross prospective need
38 and demolitions of low- and moderate-income housing. After
39 applying these secondary sources, the municipality's prospective fair
40 share obligation for the 10-year round would be established.

41 A municipality would ultimately be permitted to reduce its
42 prospective need if necessary to prevent establishing a prospective
43 need obligation that exceeds 1,000 units in total or 20 percent of the
44 estimated occupied housing stock at the beginning of the 10-year
45 round, whichever limitation results in a lower number.

46 The bill permits a municipality to be credited for as much as 15
47 percent of its affordable housing obligation through transitional
48 housing, and defines "transitional housing" as temporary housing,
49 including but not limited to, single room occupancy housing or

1 shared living and supportive living arrangements, that provides
2 access to on-site or off-site supportive services for very low-income
3 households who have recently been homeless or lack stable housing.

4 The bill would expressly prohibit the use of municipal affordable
5 housing trust fund moneys for administrative costs, attorney fees, or
6 court costs to obtain immunity from a builder's remedy, or to contest
7 the municipality's fair share obligation, or use of the trust fund
8 moneys while a municipality does not have immunity from builder's
9 remedy litigation. The bill would further expressly allow a
10 municipality to expend a portion of its affordable housing trust fund
11 on actions and efforts reasonably related to the determination of its
12 fair share obligation and the development of its housing element and
13 fair share plan.

14 The bill would prohibit a municipality from receiving bonus credit
15 for any particular type of low- or moderate-income housing, unless
16 authority to obtain bonus credit is expressly provided by the "Fair
17 Housing Act," as amended and supplemented by the bill. The bill
18 expressly authorizes 1/2 unit of bonus credit for: (1) each unit of very
19 low-income housing; (2) each affordable unit in a community
20 residence for persons with head injuries, developmental disabilities,
21 mental illness, or in transitional housing; (3) each affordable housing
22 unit located within a 1/2-mile radius, or one-mile radius for projects
23 located in a Garden State Growth Zone, surrounding a New Jersey
24 Transit Corporation, Port Authority Transit Corporation, or Port
25 Authority Trans-Hudson Corporation rail, bus, or ferry station,
26 including all light rail stations; and (4) each affordable unit of age-
27 restricted housing, provided that a bonus credit for age-restricted
28 housing would not be applied to more than 10 percent of the age-
29 restricted units that count towards a municipality's affordable
30 housing obligation for a 10 year round.

31 The bill would amend various parts of the statutory law to remove
32 references to COAH, and to transfer rulemaking authority, to the
33 extent necessary, from COAH to DCA and the New Jersey Housing
34 and Mortgage Finance Agency (HMFA). The bill directs HMFA to
35 update the Uniform Housing Affordability Controls within nine
36 months following the effective date of the bill, and adjust certain
37 affordability control periods to establish a sliding scale for deed
38 restrictions based on the percentage of affordable units set aside in a
39 given project in which projects with a higher percentage of affordable
40 units have a shorter required deed restriction. The bill permits
41 HMFA to establish a shorter deed restriction period of at least 10
42 years for accessory dwelling units or units within mobile home parks.

43 The bill would appropriate \$12 million to the program, and \$4
44 million to the Administrative Director of the Courts, from the
45 General Fund, for the purposes of carrying out their respective
46 responsibilities for the fourth round of affordable housing
47 obligations.

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1 The bill would take effect immediately, and would apply to each
2 new round of affordable housing obligations beginning after
3 enactment of the bill.