

[Second Reprint]

ASSEMBLY, No. 4

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 11, 2024, with amendments.

(Sponsorship Updated As Of: 3/18/2024)

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

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

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

11 2. The Legislature finds that:

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

20 b. In the second Mount Laurel ruling, the Supreme Court stated
21 that the determination of the methods for satisfying this constitutional
22 obligation "is better left to the Legislature," that the court has "always
23 preferred legislative to judicial action in their field," and that the
24 judicial role in upholding the Mount Laurel doctrine "could decrease
25 as a result of legislative and executive 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 comprehensive
32 planning and implementation response, including the establishment of
33 reasonable fair share housing guidelines and standards, the initial
34 determination of fair share by officials at the municipal level and the
35 preparation of a municipal housing element, State review of the local
36 fair share study and housing element, and continuous State funding for
37 **[low and moderate income]** low- and moderate-income housing to
38 replace the federal housing subsidy programs which have been almost
39 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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted February 8, 2024.

²Senate SBA committee amendments adopted March 11, 2024.

1 achievement of an appropriate fair share of the regional need for **[low**
2 and moderate income] low- and moderate-income housing as required
3 by the Mt. Laurel I and II opinions and other relevant court decisions.

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

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

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

28 i. **[Certain amendments to the enabling act of the Council on**
29 Affordable Housing are necessary to provide guidance to the council
30 to ensure consistency with the legislative intent, while at the same time
31 clarifying the limitations of the council in its rulemaking. Although
32 the court has remarked in several decisions that the Legislature has
33 granted the council considerable deference in its rulemaking, the
34 Legislature retains its power and obligation to clarify and amend the
35 enabling act from which the council derives its rulemaking power,
36 from time to time, in order to better guide the council.] (Deleted by
37 amendment, P.L. , c.) (pending before the 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 borders,
41 should no longer be utilized as a mechanism for the creation of
42 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 order the temporary dissolution of the requirement

1 that administrative remedies be exhausted prior to resolving affordable
2 housing disputes before the court, and allowed the courts to resume
3 their role as the forum of first resort for evaluating municipal
4 compliance with Mount Laurel obligations pursuant to guidelines laid
5 out by the Supreme Court's order.

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

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

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

34 p. ¹The Legislature declares that the "Fair Housing Act,"
35 P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented
36 by P.L. , c. (C.) (pending before the Legislature as this bill), is
37 intended to implement the Mount Laurel doctrine, and that
38 municipalities in compliance with the "Fair Housing Act," P.L.1985,
39 c.222 (C.52:27D-301 et al.) are also in compliance with the Mount
40 Laurel doctrine.

41 q. ¹The Legislature finds that the population of persons aged 65
42 years and older in the State has grown from approximately 13 percent
43 in 1990, to 17 percent in 2021, and that such growth, in conjunction
44 with expected future growth, makes it appropriate for the Legislature
45 to ¹['continue to']¹ allow up to ¹['25'] 30¹ percent of the units towards a
46 municipality's prospective affordable housing obligation to be
47 satisfied through the creation of age-restricted housing.

1 ²r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)
2 and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.)
3 were enacted concurrently to address the ruling of the New Jersey
4 Supreme Court in Southern Burlington County NAACP v. Mount
5 Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

6 s. The Legislature, in amending and supplementing the "Fair
7 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to
8 facilitate comprehensive planning in alignment with smart growth
9 principles, and the State Development and Redevelopment Plan.

10 t. The Legislature declares that the changes made to affordable
11 housing methodologies, obligations, and fair share plans, as
12 determined to be a necessity by the Legislature, through the enactment
13 of P.L. , c. (C.) (pending before the Legislature as this bill),
14 are made with the intention of furthering consistency with the State
15 Development and Redevelopment Plan.²

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

17
18 2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
19 read as follows:

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

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

27 b. "Housing region" means a geographic area **【**of not less than
28 two nor more than four contiguous, whole counties which exhibit
29 significant social, economic and income similarities, and which
30 constitute to the greatest extent practicable the primary metropolitan
31 statistical areas as last defined by the United States Census Bureau
32 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**
33 established pursuant to subsection b. of section 6 of
34 P.L. , c. (C.) (pending before the Legislature as this bill).

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

42 d. **【**"Moderate income" "Moderate-income housing" means
43 housing affordable according to federal Department of Housing and
44 Urban Development or other recognized standards for home ownership
45 and rental costs and occupied or reserved for occupancy by households
46 with a gross household income equal to more than 50 **【**%**】** percent but
47 less than 80 percent of the median gross household income for

1 households of the same size within the housing region in which the
2 housing is located.

3 e. **["Resolution of participation"** means a resolution adopted by a
4 municipality in which the municipality chooses to prepare a fair share
5 plan and housing element in accordance with P.L.1985, c.222
6 (C.52:27D-301 et al.).**】** (Deleted by amendment, P.L. _____, c. _____)
7 (pending before the Legislature as this bill)

8 f. "Inclusionary development" means a residential housing
9 development in which a substantial percentage of the housing units are
10 provided for a reasonable income range of **【low and moderate**
11 **income】** low- and moderate-income households.

12 g. "Conversion" means the conversion of existing commercial,
13 industrial, or residential structures for **【low and moderate income】**
14 low- and moderate-income housing purposes where a substantial
15 percentage of the housing units are provided for a reasonable income
16 range of **【low and moderate income】** low- and moderate-income
17 households.

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

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

23 j. "Prospective need" means a projection of housing needs based
24 on development and growth which is reasonably likely to occur in a
25 region or a municipality, as the case may be, as a result of actual
26 determination of public and private entities. **【In determining**
27 **prospective need, consideration shall be given to approvals of**
28 **development applications, real property transfers, and economic**
29 **projections prepared by the State Planning Commission established by**
30 **sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)】**
31 Prospective need shall be determined by the methodology set forth
32 pursuant to sections 6 and 7 of P.L. _____, c. _____ (C. _____ and C. _____)
33 (pending before the Legislature as this bill) for the fourth round and all
34 future rounds of housing obligations.

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

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

1 in accordance with the provisions of section 5 of P.L.2005, c.350
2 (C.52:27D-123.15).

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

10 n. "Accessory dwelling unit" means a residential dwelling unit
11 that provides complete independent living facilities with a private
12 entrance for one or more persons, consisting of provisions for living,
13 sleeping, eating, sanitation, and cooking, including a stove and
14 refrigerator, and is located within a proposed or existing primary
15 dwelling, within an existing or proposed structure that is accessory to a
16 dwelling on the same lot, constructed in whole or part as an extension
17 to a proposed or existing primary dwelling, or constructed as a
18 separate detached structure on the same lot as the existing or proposed
19 primary dwelling.

20 o. "Builder's remedy" means court imposed site-specific relief for
21 a litigant who seeks to build affordable housing for which the court
22 requires a municipality to utilize zoning techniques such as mandatory
23 set-asides or density bonuses, including techniques which provide for
24 the economic viability of a residential development by including
25 housing that is not for low- and moderate-income households.

26 p. "Commissioner" means the Commissioner of Community
27 Affairs.

28 q. "Compliance certification" means the certification obtained by a
29 municipality pursuant to section 3 of P.L. , c. (C.) (pending
30 before the Legislature as this bill), that protects the municipality from
31 '[a builder's remedy] exclusionary zoning litigation' during the
32 current round of present and prospective need and through July 1 of
33 the year the next round begins, which is also known as a "judgment of
34 compliance" or "judgment of repose." The term "compliance
35 certification" shall include a judgment of repose granted in an action
36 filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

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

43 s. "Deficient housing unit" means housing that: (1) is over fifty
44 years old and overcrowded; (2) lacks complete plumbing; or (3) lacks
45 complete kitchen facilities.

46 t. "Department" means the Department of Community Affairs.

47 u. 'Exclusionary zoning litigation' means litigation to challenge
48 the fair share plan, housing element, or ordinances or resolutions

1 implementing the fair share plan or housing element of a municipality
2 based on alleged noncompliance with the "Fair Housing Act,"
3 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine,
4 which litigation shall include, but shall not be limited to, litigation
5 seeking a builder's remedy.

6 v.¹ "Fair share plan" means the plan or proposal that is in a form
7 which may readily be adopted, with accompanying ordinances and
8 resolutions, pursuant to subsection f. of section 3 of
9 P.L. , c. (C.) (pending before the Legislature as this bill), by
10 which a municipality proposes to satisfy its obligation to create a
11 realistic opportunity to meet its fair share of low- and moderate-
12 income housing needs of its region and which details the affirmative
13 measures the municipality proposes to undertake to achieve its fair
14 share of low- and moderate-income housing, as provided in the
15 municipal housing element, and addresses the development regulations
16 necessary to implement the housing element, including, but not limited
17 to, inclusionary requirements and development fees, and the
18 elimination of unnecessary housing cost-generating features from the
19 municipal land use ordinances and regulations.

20 ¹[v.] w.¹ ²"Highlands-conforming municipality" means a
21 municipality that has adopted a land development ordinance
22 implementing the municipality's plan conformance petition and which
23 land development ordinance has been certified by the Highlands Water
24 Protection and Planning Council as consistent with the "Highlands
25 Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et
26 seq.), the Highlands regional master plan, and the municipality's plan
27 conformance approval. The term "land development ordinance" shall
28 be inclusive of any amendment to the municipality's land development
29 ordinances that is adopted to further the municipality's petition of plan
30 conformance.

31 x.² "Housing element" means that portion of a municipality's
32 master plan consisting of reports, statements, proposals, maps,
33 diagrams, and text designed to meet the municipality's fair share of its
34 region's present and prospective housing needs, particularly with
35 regard to low- and moderate-income housing, and which shall contain
36 the municipal present and prospective obligation for affordable
37 housing, determined pursuant to subsection f. of section 3 of P.L. , c.
38 (C.) (pending before the Legislature as this bill).

39 ¹[w.] ²[x.¹] y.² "Program" means the Affordable Housing
40 Dispute Resolution Program, established pursuant to section 5 of P.L.
41 , c. (C.) (pending before the Legislature as this bill).

42 ¹[x.] ²[y.¹] z. "State Development and Redevelopment Plan" or
43 "State Plan" means the plan prepared pursuant to sections 1 through 12
44 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.),
45 designed to represent a balance of development and conservation
46 objectives best suited to meet the needs of the State, and for the
47 purpose of coordinating planning activities and establishing Statewide

1 planning objectives in the areas of land use, housing, economic
 2 development, transportation, natural resource conservation, agriculture
 3 and farmland retention, recreation, urban and suburban redevelopment,
 4 historic preservation, public facilities and services, and
 5 intergovernmental coordination pursuant to subsection f. of section 5
 6 of P.L.1985,c.398 (C.52:18A-200).

7 aa.² "Transitional housing" means temporary housing that:

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

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

13 (3) is licensed by the department; and

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

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

16
 17 3. (New section) a. The Council on Affordable Housing,
 18 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
 19 et al.), is abolished. Each municipality shall determine its municipal
 20 present and prospective obligations in accordance with the formulas
 21 established in sections 6 and 7 of P.L. , c. (C. and C.)
 22 (pending before the Legislature as this bill) and may take into
 23 consideration the calculations in the report published by the
 24 department in accordance with this section.

25 b. Following the expiration of the third round of affordable
 26 housing obligations on July 1, 2025, a municipality shall have
 27 immunity from ¹**[a builder's remedy]** exclusionary zoning litigation¹
 28 if the municipality complies with the deadlines established in P.L. ,
 29 c. (C.) (pending before the Legislature as this bill) for both
 30 determining present and prospective obligations, and for adopting a
 31 housing element and fair share plan to meet those obligations.

32 ¹(1) Immunity from exclusionary zoning litigation shall not limit
 33 the ability of an interested party to challenge a municipality for failure
 34 to comply with the terms of its compliance certification. However, a
 35 municipality's actions to comply with the terms of its compliance
 36 certification shall retain a presumption of validity if challenged for an
 37 alleged failure described in this paragraph.

38 (2) Immunity from exclusionary zoning litigation shall not limit
 39 the ability of an interested party to ²bring a² challenge ²before² the
 40 program alleging that, despite the issuance of compliance certification,
 41 a municipality's fair share obligation, fair share plan, housing element,
 42 or ordinances implementing the fair share plan or housing element are
 43 in violation of the Mount Laurel doctrine. However, the ²decisions of
 44 the² program ²[and its actions]² shall retain a presumption of validity
 45 if challenged for an alleged violation described in this paragraph.¹

46 c. Prior to the beginning of each new 10-year round of housing
 47 obligations beginning with the fourth round on July 1, 2025, the

1 Department of Community Affairs shall conduct a calculation of
2 regional need and municipal present and prospective obligations in
3 accordance with the formulas established in sections 6 and 7 of
4 P.L. , c. (C. and C.) (pending before the Legislature as
5 this bill).

6 d. For the fourth round of affordable housing obligations, the
7 department shall prepare and submit a report to the Governor, and,
8 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
9 Legislature providing a report on the calculations of regional need and
10 municipal obligations for each region of the State ¹【on or before
11 August】 within the earlier of seven months following the effective
12 date of P.L. , c. (C.) (pending before the Legislature as this
13 bill) or December¹ 1, 2024. ²To assist in this calculation, the
14 Highlands Water Protection and Planning Council shall provide a list
15 of Highlands-conforming municipalities to the department no less than
16 five business days following the effective date of P.L. , c. (C.)
17 (pending before the Legislature as this bill).² The department shall
18 provide the report to each municipality in the State at the same time
19 that it submits the report to the Governor and Legislature and shall also
20 publish such report on the department's Internet website. For the fifth
21 round, and each subsequent new round of housing obligations, the
22 department shall prepare and submit a report to each municipality in
23 the State, the Governor, and, pursuant to section 2 of P.L.1991, c.164
24 (C.52:14-19.1), to the Legislature on these calculations on or before
25 August 1 of the year prior to the start of the new round and shall also
26 publish such report on the department's Internet website. For each 10-
27 year round of housing obligations, a municipality may take into
28 consideration the calculations in the report prepared by the department
29 pursuant to this subsection in determining its present and prospective
30 obligations.

31 e. Nothing in the provisions of subsections c., d., or f. of this
32 section shall be interpreted to render any calculation in a report by the
33 department published pursuant to this section binding on any
34 municipality or other entity, nor to render any failure by the
35 department to timely conduct the calculations or publish a report
36 required by this section to alter the deadlines or process set forth in
37 this section. The ultimate determination of a municipality's present
38 and prospective need shall be through the process as set forth below.

39 f. (1) (a) With consideration of the calculations contained in the
40 relevant report published by the department pursuant to this section,
41 for each 10-year round of affordable housing obligations beginning
42 with the fourth round, a municipality shall determine its present and
43 prospective fair share obligation for affordable housing in accordance
44 with the formulas established in sections 6 and 7 of P.L. , c. (C.
45 and C.) (pending before the Legislature as this bill) by resolution,
46 which shall describe the basis for the municipality's determination and
47 bind the municipality to adopt a housing element and fair share plan
48 pursuant to paragraph (2) of this subsection based on this

1 determination as may be adjusted by the program as set forth in this
2 subsection.

3 (b) For the fourth round of affordable housing obligations, this
4 determination of present and prospective fair share obligation shall be
5 made by binding resolution no later than January 31, 2025. After
6 adoption of this binding resolution, the municipality shall file an action
7 regarding the resolution with the program no later than 48 hours
8 following adoption. The resolution, along with the date of filing with
9 the program, shall be published on the program's publicly accessible
10 Internet website. The municipality shall also publish the resolution on
11 its publicly accessible Internet website, if the municipality maintains
12 one. If the municipality does not meet this deadline, it
13 **'[immediately]'** shall lose immunity from **'[builder's remedy]**
14 **exclusionary zoning**¹ litigation until such time as the municipality is
15 determined to have come into compliance with the "Fair Housing
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel
17 doctrine. A determination of the municipality's present and
18 prospective obligation may be established before a county level
19 housing judge as part of any resulting declaratory judgment action
20 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended
21 by P.L. , c. (C.) (pending before the Legislature as this bill),
22 or through **'[builder's remedy]** **exclusionary zoning**¹ litigation. If the
23 municipality meets this January 31 deadline, then the municipality's
24 determination of its obligation shall be established by default ¹, **and**
25 **shall bear a presumption of validity**¹ beginning on March 1, 2025, as
26 the municipality's obligation for the fourth round, unless challenged
27 by an interested party on or before February 28, 2025. ¹**The**
28 **municipality's determination of its fair share obligation shall have a**
29 **presumption of validity, if established in accordance with sections 6**
30 **and 7 of P.L. , c. (C. and C.) (pending before the**
31 **Legislature as this bill), in any challenge initiated through the**
32 **program.**¹ An interested party may file a challenge with the program,
33 after adoption of the binding resolution and prior to March 1, 2025,
34 alleging that the municipality's determination of its present and
35 prospective obligation does not comply with the requirements of
36 sections 6 and 7 of P.L. , c. (C. and C.) (pending before
37 the Legislature as this bill). For the fifth round, and each subsequent
38 new round of housing obligations, the deadlines established in this
39 subparagraph shall be on the last day of January, the last day of
40 February, and the first day of March, respectively, of the year of the
41 start of each new round.

42 (c) The Administrative Director of the Courts shall establish
43 procedures for the program to consider a challenge and resolve a
44 dispute initiated by an interested party pursuant to subparagraph (b) of
45 this paragraph. To resolve a challenge, the program shall apply an
46 objective assessment standard to determine whether or not the
47 municipality's calculation of its obligation is compliant with the

1 requirements of sections 6 and 7 of P.L. , c. (C. and C.)
2 (pending before the Legislature as this bill). Any challenge must state
3 with particularity how the municipal calculation fails to comply with
4 sections 6 and 7 of P.L. , c. (C. and C.) (pending before
5 the Legislature as this bill) and include the challenger's own
6 calculation of the fair share obligations in compliance with sections 6
7 and 7 of P.L. , c. (C. and C.) (pending before the
8 Legislature as this bill). The program shall establish procedures to
9 summarily dismiss any objection or challenge that does not meet these
10 minimum standards. For the purpose of efficiency, the program shall,
11 in its own discretion, permit multiple challenges to the same municipal
12 determination to be consolidated. The program's approach to
13 resolving a dispute may include: (i) a finding that the municipality's
14 determination of its present and prospective need obligation did not
15 facially comply with the requirements of sections 6 and 7 of P.L. , c.
16 (C. and C.) (pending before the Legislature as this bill) and
17 thus the municipality's immunity shall be revoked; (ii) an adjustment
18 of the municipality's determination of its present and prospective need
19 obligation to comply with the requirements of sections 6 and 7 of
20 P.L. , c. (C. and C.) (pending before the Legislature as
21 this bill) without revoking immunity; or (iii) a rejection of a challenge
22 and affirm the municipality's determination. The decision shall be
23 provided to the municipality and all parties that have filed challenges
24 no later than March 31 of the year when the current round is expiring
25 and the new round is beginning and concurrently posted on the
26 program's Internet website. The Administrative Director of the Courts
27 shall establish procedures for any further appellate review of such
28 determinations, and may establish an expedited process for
29 consolidated review of any such challenges by the Supreme Court,
30 provided that any party seeking appellate review shall not change the
31 deadlines established for municipal filing of a housing element and fair
32 share plan, and implementing ordinances.

33 (2) (a) A municipality shall adopt a housing element and fair
34 share plan as provided for by the "Fair Housing Act," P.L.1985, c.222
35 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning
36 and other ordinances and resolutions to implement its present and
37 prospective obligation established in paragraph (1) of this subsection
38 on or before June 30, 2025. After adoption of the housing element and
39 fair share plan, and the proposal of drafts of the appropriate zoning and
40 other ordinances and resolutions, the municipality shall within 48
41 hours of adoption or by June 30, 2025, whichever is sooner, file the
42 same with the program as part of the action initiated pursuant to
43 subparagraph (b) of paragraph (1) of this subsection through the
44 program's Internet website. Any municipality that does not do so by
45 June 30, 2025, shall not retain immunity from ¹**["builder's remedy"]**
46 exclusionary zoning¹ litigation until such time as the municipality is
47 determined to have come into compliance with the "Fair Housing
48 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel

1 doctrine and shall be subject to review through the declaratory
2 judgment process as established in paragraph (3) of this subsection.
3 As part of its housing element and fair share plan, the municipality
4 shall include an assessment of the degree to which the municipality
5 has met its fair share obligation from the prior rounds of affordable
6 housing obligations as established by prior court approval, or approval
7 by the council, and determine to what extent this obligation is
8 unfulfilled or whether the municipality has credits in excess of its prior
9 round obligations. If a prior round obligation remains unfulfilled, or a
10 municipality never received an approval from court or the council for
11 any prior round, the municipality shall address such unfulfilled prior
12 round obligation in its housing element and fair share plan. Units
13 included as part of the municipality's unfulfilled prior round obligation
14 shall not count towards the cap on units in the municipality's
15 prospective need obligation. In addressing prior round obligations, the
16 municipality shall retain any sites that, in furtherance of the prior
17 round obligation, are the subject of a contractual agreement with a
18 developer, or for which the developer has filed a complete application
19 seeking subdivision or site plan approval prior to the date by which the
20 housing element and fair share plan are required to be submitted, and
21 shall demonstrate how any sites that were not built in the prior rounds
22 continue to present a realistic opportunity, which may include
23 proposing changes to the zoning on the site to make its development
24 more likely, and which may also include the dedication of municipal
25 affordable housing trust fund dollars or other monetary or in-kind
26 resources. The municipality shall only plan to replace any sites
27 planned for development as provided by a prior court approval,
28 settlement agreement, or approval by the council, with alternative
29 development plans, if it is determined that the previously planned sites
30 no longer present a realistic opportunity, and the sites in the alternative
31 development plan provide at least an equivalent number of affordable
32 units and are otherwise in compliance with the "Fair Housing Act,"
33 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.
34 If a municipality proposes to replace a site for which a complete
35 application seeking subdivision or site plan approval has not been filed
36 prior to date by which the housing element and fair share plan is
37 required to be submitted, there shall be a rebuttable presumption in any
38 challenge filed to the municipality's plan that any site for which a
39 zoning designation was adopted creating a realistic opportunity for the
40 development of a site prior to July 1, 2020, or July 1 of every 10th
41 year thereafter, as applicable, may be replaced with one or more
42 alternative sites that provide a realistic opportunity for at least the
43 same number of affordable units and is otherwise in compliance with
44 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the
45 Mount Laurel doctrine. To the extent a municipality has credits,
46 including bonus credits, from units created during a prior round that
47 are otherwise permitted to be allocated toward the municipality's
48 unfulfilled prior round obligation or present or prospective need

1 obligation in an upcoming round, the municipality shall be entitled to
2 rely on the rules, including rules for bonus credits, applicable for the
3 round during which those credits were accumulated. If a municipality
4 has credits in excess of its prior round obligations, and such excess
5 credits represent housing that will continue to be deed-restricted and
6 affordable through the current round, the municipality may include
7 such housing, and applicable bonus credits, towards addressing the
8 municipality's new calculation of prospective need. Consistent with
9 subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the
10 total number of bonus credits shall in no circumstance exceed 25
11 percent of the municipality's prospective obligation in any round. The
12 municipality may in its plan lower its prospective need obligation to
13 the extent necessary to prevent establishing a prospective need
14 obligation that requires the municipality to provide a realistic
15 opportunity for more than 1,000 housing units, after the application of
16 any excess credits, or to prevent a prospective need obligation that
17 exceeds 20 percent of the total number of households in a municipality
18 according to the most recent federal decennial census, not including
19 any prior round obligation. If a municipality is subject to both a 1,000
20 unit cap or 20 percent cap it may apply whichever cap results in a
21 lower prospective need obligation. For the fifth round, and for each
22 subsequent new round of housing obligations, the deadlines in this
23 paragraph shall be June 30 for the adoption of the housing element and
24 fair share plan, and the proposal of drafts of the appropriate zoning and
25 other ordinances and resolutions to implement its present and
26 prospective obligation, of the year of the start of the new round.

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

1 discretion, permit multiple challenges to the same municipal housing
2 element and fair share plan to be consolidated. If a municipality's fair
3 share plan and housing element is not challenged on or before August
4 31, 2025, then the program shall 'apply an objective standard to
5 conduct a limited' review 'of' the fair share plan and housing element
6 for consistency and to determine whether it 'enables the municipality
7 to satisfy the fair share obligation, applies compliant mechanisms,
8 meets the threshold requirements for rental and family units, does not
9 exceed limits on other unit or category types, and' is compliant with
10 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the
11 Mount Laurel doctrine '[, and]' . The program shall' issue a
12 compliance certification unless these objective standards are not met.
13 The program shall facilitate communication between the municipality
14 and any interested parties for a challenge, and provide the municipality
15 until December 31, 2025 to commit to revising its fair share plan and
16 housing element in compliance with the changes requested in the
17 challenge, or provide an explanation as to why it will not make all of
18 the requested changes, or both. Upon resolution of a challenge, the
19 program shall issue compliance certification, conditioned on the
20 municipality's commitment, as necessary, to revise its fair share plan
21 and housing element in accordance with the resolution of the
22 challenge. The program may also terminate immunity if it finds that
23 the municipality is not determined to come into constitutional
24 compliance at any point in the process. If by December 31, 2025, the
25 municipality and any interested party that filed a response have
26 resolved the issues raised in the response through agreement or
27 withdrawal of the filing, then the program shall review the fair share
28 plan and housing element for consistency and to determine whether it
29 is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
30 301 et al.) and the Mount Laurel doctrine, and issue a compliance
31 certification unless these objective standards are not met. For the fifth
32 round, and each subsequent new round of housing obligations, the
33 deadline established in this subparagraph for an interested party to file
34 a challenge shall be August 31, and for the municipality to revise its
35 housing element and fair share plan in response, shall be December 31,
36 of the year of the beginning of the new round.

37 (c) For the fourth round of affordable housing obligations, the
38 implementing ordinances and resolutions, proposed pursuant to
39 subparagraph (a) of this paragraph, and incorporating any changes
40 from the program, shall be adopted on or before March 15, 2026. For
41 the fifth round, and each subsequent new round of housing obligations,
42 the deadline established in this subparagraph for the implementing
43 ordinances and resolutions shall be on March 15 of the year following
44 the beginning of the new round. After adoption of the implementing
45 ordinances and resolutions by the municipality, the municipality shall
46 immediately file the ordinances and resolutions with the program
47 through the program's Internet website. Failure to meet the March 15

1 deadline shall result in the municipality losing immunity from
2 ~~1~~ **builder's remedy** exclusionary zoning¹ litigation.

3 (d) The program may permit a municipality that still has a
4 remaining dispute by interested parties to retain immunity from
5 ~~1~~ **builder's remedy** exclusionary zoning¹ litigation into the year
6 following the year in which a new round begins if the program, or
7 county level housing judge, determines that the municipality has been
8 unable to resolve the issues disputed despite being determined to come
9 into constitutional compliance. The Administrative Director of the
10 Courts shall develop procedures to enable a county level housing judge
11 to resolve this dispute over the issuance of compliance certification
12 through a summary proceeding in Superior Court following the year in
13 which the new round begins. A judge shall be permitted to serve as a
14 county level housing judge for more than one county in the same
15 vicinage. The pendency of such a dispute shall not stay the deadline
16 for adoption of implementing ordinances and resolutions pursuant to
17 this paragraph. ¹The implementing ordinances and resolutions
18 adopted prior to the resolution of the dispute may be subject to
19 changes to reflect the results of the dispute. As an alternative to
20 adopting ²[the] all necessary² implementing ordinances and
21 resolutions by the March 15 deadline, a municipality involved in a
22 continuing dispute over the issuance of compliance certification may
23 adopt a binding resolution by this date to commit to adopting the
24 implementing ordinances and resolutions following resolution of the
25 dispute, with necessary adjustments to reflect the resolution of the
26 dispute.¹

27 (e) Once a municipality has received a compliance certification or
28 otherwise has had its fair share obligation and housing element and
29 fair share plan finally determined via judgment of repose or other
30 judgment, the municipality shall make the municipality's fair share
31 plan and housing element, as well as any subsequently adopted
32 implementing ordinances and resolutions, or amendments thereto,
33 available to the department and the program for publication on the
34 department's and program's respective Internet websites.

35 (3) (a) If a municipality fails to materially¹ adhere to any of the
36 deadlines established in paragraphs (1) or (2) of this subsection due to
37 circumstances beyond the control of the municipality, including but
38 not limited to an inability to meet a deadline due to an extreme
39 weather event, then the program, or the county level housing judge, in
40 accordance with court rules, may permit a municipality to have a grace
41 period to come into compliance with the timeline, the length of which,
42 and effect of which on later deadlines, shall be determined on a case-
43 by-case basis.

44 (b) A municipality that has not adopted and published a binding
45 resolution pursuant to paragraph (1) of this subsection or that has not
46 adopted and filed a housing element and fair share plan pursuant to
47 paragraph (2) of this subsection may seek compliance certification by

1 filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-
2 313), provided that any ¹**builder's remedy** exclusionary zoning¹
3 litigation filed by a plaintiff against such a municipality prior to such
4 time may proceed notwithstanding such filing. In a municipality that
5 has adopted and published a binding resolution pursuant to paragraph
6 (1) of this subsection and has adopted and filed a housing element and
7 fair share plan pursuant to paragraph (2) of this subsection, a court
8 shall not ¹**grant a builder's remedy to a plaintiff in** consider¹
9 exclusionary zoning litigation during the timeframe after the timely
10 submission of a binding resolution or fair share plan and housing
11 element of a municipality, or both, and before a challenge is submitted,
12 or during the timeframe of a challenge that is pending resolution with
13 the program pursuant to this subsection. A court may ¹**grant a**
14 **builder's remedy to a plaintiff in** consider¹ exclusionary zoning
15 litigation after such timeframe upon a finding that the municipality: (i)
16 is determined to be constitutionally noncompliant with its
17 responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222
18 (C.52:27D-301 et al.) or is participating in the program in bad faith;
19 (ii) has failed to meet the deadlines established pursuant to P.L. , c.
20 (C.) (pending before the Legislature as this bill); or (iii) has, after
21 receiving compliance certification, failed to comply with the terms of
22 that certification by not actually allowing for the development of the
23 affordable housing as provided for in its fair share plan and housing
24 element through actions, omissions, or both, of a municipality or its
25 subordinate boards.

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

28 (d) A determination by the program as to the present and
29 prospective need obligation or as to issuance of compliance
30 certification pursuant to this section shall be considered a final
31 decision, subject to appellate review pursuant to the procedures set
32 forth in subparagraph (c) of paragraph (1) of subsection f. of this
33 section.

34 (e) A municipality shall not be deemed out of compliance with the
35 deadlines of P.L. , c. (C.) (pending before the Legislature as
36 this bill), or lose immunity from ¹**builder's remedy** exclusionary
37 zoning¹ litigation, due to a failure by the program to promptly
38 maintain and update its Internet website, or other operational failure of
39 the program.

40 ¹g. ²**The program shall be made a party to, and shall be**
41 **responsible for defending its issuance of compliance certification in,**
42 **any litigation alleging that, despite the issuance of compliance**
43 **certification, a municipality's fair share obligation, fair share plan,**
44 **housing element, or ordinances implementing the fair share plan or**
45 **housing element are not in compliance with the Mount Laurel**
46 **doctrine.**¹ **A compliance certification, issued pursuant to P.L. , c.**
47 **(C.) (pending before the Legislature as this bill), shall be**

1 accompanied by a written report that shall set forth the basis of the
2 issuance of the certification, and shall be in a format to be developed
3 and approved by the Administrative Director of the Courts.²
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 of
10 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 30
13 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), for any round of affordable housing obligations, the
16 municipality may request and be provided with a grace period pursuant
17 to paragraph (3) of subsection f. of section 3 of P.L. , c. (C.)
18 (pending before the Legislature as this bill), if authorized by the
19 program or county level housing judge, as determined by the rules of
20 court. If a municipality that has not satisfied this June 30 deadline is
21 not provided with a grace period, the municipality may institute an
22 action for declaratory judgment granting it repose in the Superior
23 Court 【, but in no event shall a grant of substantive certification extend
24 beyond a 10-year period starting on the date the municipality files its
25 housing element with the council】 for the 10-year period constituting
26 the current round of fair share obligations. The municipality shall
27 publish notice of its 【petition】 filing of a declaratory judgment action
28 in a newspaper of general circulation within the municipality and
29 county and shall make available to the public information on the
30 element and ordinances by submitting such information to the program
31 to be published on the Internet website of the program in accordance
32 with 【such procedures as the council shall establish. The council shall
33 also establish a procedure for providing public notice of each petition
34 which it receives】 section 3 of P.L. , c. (C.) (pending before
35 the Legislature as this bill).

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

44 **【The Council shall establish procedures for】** c. (1) A
45 municipality or other interested party may file an action through the
46 program seeking a realistic opportunity review 【at the midpoint of the
47 certification period and shall provide for notice to the public】 at the

1 midpoint of the certification period and shall provide for notice to the
2 public, including a realistic opportunity review of any inclusionary
3 development site in the housing element and fair share plan that has
4 not received preliminary site plan approval prior to the midpoint of the
5 10-year round. If such an action is initiated by a municipality, the
6 municipality ¹~~shall~~ may¹ propose one or more alternative sites with
7 an accompanying development plan or plans that provide a realistic
8 opportunity for the same number of affordable units and is otherwise
9 in compliance with the "Fair Housing Act," P.L.1985, c.222
10 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if
11 the facts demonstrate that the municipality or its subordinate boards
12 have prevented the site from receiving site plan approval, then the
13 program shall reject the municipality's challenge.

14 (2) Any party may file a request for information from the program
15 regarding the progress of development at any inclusionary
16 development site in the housing element and fair share plan of a
17 municipality, or at any alternative site proposed by the municipality.
18 The program may respond to a request independently or in
19 coordination with the department.

20 (cf: P.L.2001, c.435, s.5)

21

22 5. (New section) a. There is established an Affordable Housing
23 Dispute Resolution Program that shall have the purpose of efficiently
24 resolving disputes involving the "Fair Housing Act," P.L.1985, c.222
25 (C.52:27D-301 et al.), to consist of an odd number of members, of at
26 least three and no more than seven members who shall lead the
27 administration of the program. The ¹~~Chief Justice of the Supreme~~
28 ~~Court~~ Administrative Director of the Courts¹ shall update the
29 assignment of designated Mount Laurel judges to indicate which
30 current or retired and on recall judges of the Superior Court shall serve
31 as members, within ¹~~40~~ 60¹ days following the effective date of
32 P.L. , c. (C.) (pending before the Legislature as this bill). The
33 ¹~~Chief Justice of the Supreme Court~~ Administrative Director of the
34 Courts¹ may appoint other qualified experts as members if sufficient
35 current and retired judges are unavailable. The ¹~~Chief Justice of the~~
36 ~~Supreme Court~~ Administrative Director of the Courts¹ shall take into
37 consideration in making such appointments experience in the
38 employment of alternative dispute resolution methods and in relevant
39 subject matter.

40 b. The ¹~~Chief Justice of the Supreme Court~~ Administrative
41 Director of the Courts¹ shall designate a member to serve as chair.
42 The ¹~~Chief Justice of the Supreme Court~~ Administrative Director of
43 the Courts¹ shall make new appointments as needs arise for new
44 appointments.

45 c. The program, in its discretion and in accordance with Rules of
46 Court, may consult or employ the services of one or more special
47 masters or staff to assist it in rendering determinations, resolving

1 disputes, and facilitating communication as required by subparagraph
2 (b) of paragraph (2) of subsection f. of section 3 of P.L. , c.
3 (C.) (pending before the Legislature as this bill). In addition, the
4 program may incorporate any existing or newly established court
5 mediation or alternative dispute resolution process to assist the
6 program in resolving disputes and facilitating communication among
7 municipalities and interested parties.

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

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

18 f. The Administrative Director of the Courts shall establish
19 procedures for the purpose of efficiently resolving disputes involving
20 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for
21 circumstances in which the program is unable to address the dispute
22 within the time limitations established pursuant to section 3 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill). As a part of
24 the procedures established pursuant to this section, in order to facilitate
25 an appropriate level of localized control of affordable housing
26 decisions, for each vicinage, the Chief Justice of the Supreme Court
27 shall designate a Superior Court judge who sits within the vicinage, or
28 a retired judge who, during the judge's tenure as a judge, served within
29 the vicinage, to serve as county level housing judge to resolve disputes
30 over the compliance, of fair share plans and housing elements of
31 municipalities within their designated county or counties, with the
32 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as
33 disputes that arise with respect to ongoing compliance or
34 noncompliance with obligations created by fair share plans, housing
35 elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
36 et al.). A judge shall be permitted to serve as a county level housing
37 judge for more than one county in the same vicinage.

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

44
45 6. (New section) a. Municipal present need for each 10-year
46 round of affordable housing obligations shall be determined by
47 estimating the deficient housing units occupied by low- and moderate-
48 income households in the region, following a methodology similar to

1 the methodology used to determine third round municipal present
2 need, through the use of most recent datasets made available through
3 the federal decennial census and the American Community Survey ²,
4 including the Comprehensive Housing Affordability Strategy dataset
5 thereof².

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

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

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

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

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

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

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

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

22 (2) Regional prospective need for a 10-year round of low- and
23 moderate-income housing obligations shall be determined through the
24 calculation provided in this subsection. Projected household change
25 for a 10-year round in a region shall be estimated by establishing the
26 household change experienced in the region between the most recent
27 federal decennial census, and the second-most recent federal decennial
28 census. This household change, if positive, shall be divided by 2.5 to
29 estimate the number of low- and moderate-income homes needed to
30 address low- and moderate-income household change in the region,
31 and to determine the regional prospective need for a 10-year round of
32 low- and moderate-income housing obligations. If household change
33 is zero or negative, the number of low- and moderate-income homes
34 needed to address low- and moderate-income household change in the
35 region and the regional prospective need shall be zero.

36
37 7. (New section) a. The present and prospective fair share
38 obligation for low- and moderate-income housing for each
39 municipality in the State shall be determined as described in this
40 section. In addition, the March 8, 2018 unpublished decision of the
41 Superior Court, Law Division, Mercer County, In re Application of
42 Municipality of Princeton shall be referenced as to datasets and
43 methodologies that are not explicitly addressed by this section. These
44 determinations of municipal present and prospective need shall be
45 based on a determination of the present and prospective regional need
46 for low- and moderate-income housing, established pursuant to section
47 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

1 These calculations of municipal present and prospective need shall use
2 necessary datasets that are updated to the greatest extent practicable.

3 b. A municipality's present need obligation shall be determined by
4 estimating the existing deficient housing units currently occupied by
5 low- and moderate-income households within the municipality,
6 following a methodology comparable to the methodology used to
7 determine third round present need, through the use of datasets made
8 available through the federal decennial census and the American
9 Community Survey ², including the Comprehensive Housing
10 Affordability Strategy dataset thereof².

11 c. A municipality's prospective fair share obligation of the
12 regional prospective need for the upcoming 10-year round shall be
13 determined in accordance with this subsection:

14 (1) If a municipality is a qualified urban aid municipality, the
15 municipality shall be exempt from responsibility for any fair share
16 prospective need obligation for the upcoming 10-year round. For the
17 purposes of this section, a municipality is a qualified urban aid
18 municipality if the municipality, as of July 1 of the year prior to the
19 beginning of a new round, is designated by the department, pursuant to
20 P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and the
21 municipality meets at least one of the following criteria:

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

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

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

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

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

36 (2) A municipality's equalized nonresidential valuation factor
37 shall be determined. To determine this factor, the changes in
38 nonresidential property valuations in the municipality, since the
39 beginning of the round preceding the round being calculated, shall be
40 calculated using data published by the Division of Local Government
41 Services in the department. ²For the purposes of this paragraph, the
42 beginning of the round of affordable housing obligations preceding the
43 fourth round shall be the beginning of the gap period in 1999.² The
44 change in the municipality's nonresidential valuations shall be divided
45 by the regional total change in nonresidential valuations to determine
46 the municipality's share of the regional change as the equalized
47 nonresidential valuation factor.

1 (3) A municipality's income capacity factor shall be determined.
2 This factor shall be determined by calculating the average of the
3 following measures:

4 (a) The municipal share of the regional sum of the differences
5 between the median municipal household income, according to the
6 most recent American Community Survey Five-Year Estimates, and
7 an income floor of \$100 below the lowest median household income in
8 the region; and

9 (b) The municipal share of the regional sum of the differences
10 between the median municipal household incomes and an income floor
11 of \$100 below the lowest median household income in the region,
12 weighted by the number of the households in the municipality.

13 (4) A municipality's land capacity factor shall be determined.
14 This factor shall be determined by estimating the area of developable
15 ¹[and redevelopable]¹ land in the municipality's boundaries, and
16 regional boundaries, that may accommodate development through the
17 use of the "land use / land cover data" most recently published by the
18 Department of Environmental Protection, ²data from the American
19 Community Survey and Comprehensive Housing Affordability
20 Strategy dataset thereof, MOD-IV Property Tax List data from the
21 Division of Taxation in the Department of the Treasury, and
22 construction permit data from the Department of Community Affairs,²
23 and weighing such land based on the planning area type in which such
24 land is located. After the weighing factors are applied, the sum of the
25 total developable ¹[and redevelopable]¹ land area that may
26 accommodate development in the municipality, and in the region shall
27 be determined. The municipality's share of its region's developable
28 ¹[and redevelopable]¹ land shall be its land capacity factor.
29 Developable ¹[and redevelopable]¹ land that may accommodate
30 development shall be weighted based on the planning area type in
31 which such land is located, as designated pursuant to P.L.1985, c.398
32 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or
33 P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

34 (a) Planning Area 1 (Metropolitan) shall have a weighting factor
35 of 1.0;

36 (b) Planning Area 2 (Suburban) shall have a weighting factor of
37 1.0;

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

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

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

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

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

46 (h) Pinelands Regional Growth Area shall have a weighting factor
47 of 0.5;

- 1 (i) Pinelands Town shall have a weighting factor of 0.5;
- 2 (j) All other Pinelands shall have a weighting factor of 0.0;
- 3 (k) Meadowlands shall have a weighting factor of 1.0;
- 4 (l) Meadowlands Center shall have a weighting factor of 1.0;
- 5 (m) Highlands Preservation Area shall have a weighting factor of
- 6 0.0;
- 7 (n) Highlands Planning Area Existing Community Zone ²【, opted
- 8 in municipality by May 1, 2022】 and Highlands Designated Center in
- 9 a Highlands-conforming municipality, as determined by the Highlands
- 10 Water Protection and Planning Council pursuant to the list provided to
- 11 the department pursuant to subsection d. of section 3 of P.L. , c.
- 12 (C.) (pending before the Legislature as this bill),² shall have a
- 13 weighting factor of 1.0;
- 14 (o) Highlands Planning Area, State-designated sewer service area,
- 15 ²【municipality not opted in by May 1, 2022】 Highlands municipality
- 16 that is not a Highlands-conforming municipality as determined by the
- 17 Highlands Water Protection and Planning Council pursuant to the list
- 18 provided to the department pursuant to subsection d. of section 3 of
- 19 P.L. , c. (C.) (pending before the Legislature as this bill)²,
- 20 shall have a weighting factor of 1.0; and
- 21 (p) All other Highlands Planning Areas shall have a weighting
- 22 factor of 0.0.
- 23 (5) The equalized nonresidential valuation factor, income capacity
- 24 factor, and land capacity factor, determined in paragraphs (2), (3), and
- 25 (4) of this subsection, shall be averaged to yield the municipality's
- 26 average allocation factor for distributing gross regional prospective
- 27 need to the municipality. The regional prospective need shall then be
- 28 multiplied by the municipality's average allocation factor to determine
- 29 the municipality's gross prospective need for the 10-year round.
- 30 ²【(6) Secondary sources of supply and demand shall be adjusted
- 31 for by first calculating demolitions of low- and moderate-income
- 32 housing, and housing creation through low- and moderate-income
- 33 residential conversions. A municipality's share of low- and moderate-
- 34 income conversions shall then be subtracted from the sum of each
- 35 municipality's allocated share of gross prospective need and
- 36 demolitions of low- and moderate-income housing.】²
- 37
- 38 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read
- 39 as follows:
- 40 4. a. Upon failure to perform any obligation of a residential
- 41 mortgage by the residential mortgage debtor and before any
- 42 residential mortgage lender may accelerate the maturity of any
- 43 residential mortgage obligation and commence any foreclosure or
- 44 other legal action to take possession of the residential property
- 45 which is the subject of the mortgage, the residential mortgage
- 46 lender shall give a notice of intention, which shall include a notice
- 47 of the right to cure the default as provided in section 5 of P.L.1995,

1 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in
2 advance of such action as provided in this section, to the residential
3 mortgage debtor, and, if the mortgage is secured by a residence for
4 which a restriction on affordability was recorded in the county in
5 which the property is located, the clerk of the municipality in which
6 the subject property is located, the municipal housing liaison, if one
7 has been appointed by the municipality [pursuant to the regulations
8 of the Council on Affordable Housing, and the Commissioner of
9 Community Affairs]. For the purposes of this section, "restriction
10 on affordability" means any conditions recorded with a mortgage or
11 a deed which would limit the sale of such property to income
12 qualified households pursuant to the rules adopted to effectuate the
13 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

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

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

- 25 (1) the particular obligation or real estate security interest;
- 26 (2) the nature of the default claimed;
- 27 (3) the right of the debtor to cure the default as provided in
28 section 5 of P.L.1995, c.244 (C.2A:50-57);
- 29 (4) what performance, including what sum of money, if any, and
30 interest, shall be tendered to cure the default as of the date specified
31 under paragraph (5) of this subsection c.;
- 32 (5) the date by which the debtor shall cure the default to avoid
33 initiation of foreclosure proceedings, which date shall not be less
34 than 30 days after the date the notice is effective, and the name and
35 address and phone number of a person to whom the payment or
36 tender shall be made;
- 37 (6) that if the debtor does not cure the default by the date
38 specified under paragraph (5) of this subsection c., the lender may
39 take steps to terminate the debtor's ownership in the property by
40 commencing a foreclosure suit in a court of competent jurisdiction;
- 41 (7) that if the lender takes the steps indicated pursuant to
42 paragraph (6) of this subsection c., a debtor shall still have the right
43 to cure the default pursuant to section 5 of P.L.1995, c.244
44 (C.2A:50-57), but that the debtor shall be responsible for the
45 lender's court costs and attorneys' fees in an amount not to exceed
46 that amount permitted pursuant to the Rules Governing the Courts
47 of the State of New Jersey;

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

5 (9) that the debtor is advised to seek counsel from an attorney of
6 the debtor's own choosing concerning the debtor's residential
7 mortgage default situation, and that, if the debtor is unable to obtain
8 an attorney, the debtor may communicate with the New Jersey Bar
9 Association or Lawyer Referral Service in the county in which the
10 residential property securing the mortgage loan is located; and that,
11 if the debtor is unable to afford an attorney, the debtor may
12 communicate with the Legal Services Office in the county in which
13 the property is located;

14 (10) the possible availability of financial assistance for curing a
15 default from programs operated by the State or federal government
16 or nonprofit organizations, if any, as identified by the
17 Commissioner of Banking and Insurance and, if the property is
18 subject to restrictions on affordability, the address and phone
19 number of the municipal affordable housing liaison and of the New
20 Jersey Housing and Mortgage Finance Agency. This requirement
21 shall be satisfied by attaching a list of such programs promulgated
22 by the commissioner;

23 (11) the name and address of the lender and the telephone
24 number of a representative of the lender whom the debtor may
25 contact if the debtor disagrees with the lender's assertion that a
26 default has occurred or the correctness of the mortgage lender's
27 calculation of the amount required to cure the default;

28 (12) that if the lender takes the steps indicated pursuant to
29 paragraph (6) of this subsection, the debtor has the option to
30 participate in the Foreclosure Mediation Program following the
31 filing of a mortgage foreclosure complaint by initiating mediation
32 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,
33 c.64 (C.2A:50-77). Notice of the option to participate in the
34 Foreclosure Mediation Program shall adhere to the requirements of
35 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,
36 procedures, or guidelines adopted by the Supreme Court;

37 (13) that the debtor is entitled to housing counseling, at no cost
38 to the debtor, through the Foreclosure Mediation Program
39 established by the New Jersey Judiciary, including information on
40 how to contact the program;

41 (14) that if the property which is the subject of the mortgage has
42 more than one dwelling unit but less than five, one of which is
43 occupied by the debtor or a member of the debtor's immediate
44 family as the debtor's or member's residence at the time the loan is
45 originated, and is not properly maintained and meets the necessary
46 conditions for receivership eligibility, established pursuant to
47 section 4 of the "Multifamily Housing Preservation and
48 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential

1 mortgage lender shall file an order to show cause to appoint a
2 receiver; and

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

8 d. The notice of intention to foreclose required to be provided
9 pursuant to this section shall not be required if the debtor has
10 voluntarily surrendered the property which is the subject of the
11 residential mortgage.

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

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

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

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

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

42

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

45 2. The New Jersey Council on Physical Fitness and Sports,
46 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is
47 authorized to provide grants to assist low-income families in
48 purchasing the protective eyewear. As used in this section, a "low-

1 income family" means a family which qualifies for low-income
2 housing under the standards promulgated by the **【Council on**
3 **Affordable Housing】** New Jersey Housing and Mortgage Finance
4 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222
5 (C.52:27D-301 et al.).
6 (cf: P.L.2005, c.306, s.2)

7
8 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to
9 read as follows:

10 25. a. The **【Council on Affordable Housing** shall take into
11 consideration the **】** regional master plan **【prior to making any】** shall
12 be taken into account as part of the determination of obligations
13 pursuant to the method in section 7 of P.L. , c. (C.)
14 (pending before the Legislature as this bill) regarding the allocation
15 of the prospective fair share of the housing need **【in any**
16 **municipality in the Highlands Region】** under the "Fair Housing
17 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share
18 period subsequent to **【1999】** the effective date of
19 P.L. , c. (C.) (pending before the Legislature as this bill) if
20 a municipality is in the Highlands Region.

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

26
27 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to
28 read as follows:

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

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

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

46 c. A licensed attorney who negotiates the terms of a residential
47 mortgage loan on behalf of a client as an ancillary matter to the

1 attorney's representation of the client, unless the attorney is
2 compensated by a residential mortgage lender, residential mortgage
3 broker, or mortgage loan originator.

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

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

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

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

34 (1) with or on behalf of an immediate family member; or
35 (2) secured by a dwelling that serves as the individual's
36 residence.

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

42 (1) titled by the New Jersey Motor Vehicle Commission;
43 (2) located in a mobile home park as defined in subsection e. of
44 section 3 of P.L.1983, c.400 (C.54:4-1.4); and
45 (3) exempt from taxation as real property pursuant to subsection
46 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

47 i. A bona fide not for profit entity and any individuals directly
48 employed by that entity, so long as the entity maintains its tax

1 exempt status under Section 501(c)(3) of the Internal Revenue Code
2 of 1986 and otherwise meets the definition of "bona fide not for
3 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as
4 periodically determined by the department in accordance with rules
5 established by the commissioner.

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

7
8 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to
9 read as follows:

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

21 b. All money collected as fines under subsection a. of this
22 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-
23 10.6) shall be deposited in a nonlapsing revolving fund to be known
24 as the "Bicycle and Skating Safety Fund." Interest earned on
25 money deposited in the fund shall accrue to the fund. Money in the
26 fund shall be utilized by the director to provide educational
27 programs devoted to bicycle, roller skating and skateboarding
28 safety. If the director determines that sufficient money is available
29 in the fund, he also may use, in a manner prescribed by rule and
30 regulation, the money to assist **low income** low-income families
31 in purchasing approved bicycle helmets. For the purposes of this
32 subsection, **["low income family"]** "low-income family" means a
33 family which qualifies for **low income** low-income housing under
34 the standards promulgated by the **Council on Affordable Housing**
35 New 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
43 residential and non-residential properties has been authorized by the
44 court 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 the Legislature's determination
47 that the role of the Council on Affordable Housing has not

1 developed in practice as intended, the Legislature further
2 determines that authority relating to rulemaking on the collection of
3 residential and non-residential development fees is appropriately
4 delegated to the Department of Community Affairs, given the
5 department's existing roles related to local government finance and
6 the funding and financing of affordable housing throughout the
7 State.

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

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

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

30 e. **[The "Statewide Non-Residential Development Fee Act,"**
31 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
32 C.40:55D-8.7), prohibits municipalities from imposing their own
33 fees to fund affordable housing on non-residential development, and
34 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this
35 underlying policy.] Deleted by amendment P.L. , c. (pending
36 before the Legislature as this bill)

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

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

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

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

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

10 "Commissioner" means the Commissioner of Community
11 Affairs.

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

14 "Department" means the Department of Community Affairs.

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

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

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

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

1 Retirement Community Regulation and Financial Disclosure Act,"
2 P.L.1986, c.103 (C.52:27D-330 et seq.).

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

6 "Relating to the provision of housing" shall be liberally
7 construed to include the construction, maintenance, or operation of
8 housing, including but not limited to the provision of services to
9 such housing and the funding of any of the above.

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

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

17

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

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

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

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

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

38 (1) parking lots and parking structures, regardless of whether the
39 parking lot or parking structure is constructed in conjunction with a
40 non-residential development, such as an office building, or whether the
41 parking lot is developed as an independent non-residential
42 development;

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

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

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

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

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

14 A developer of a non-residential development exempted from the
15 non-residential development fee pursuant to this section shall be
16 subject to it at such time the basis for the exemption set forth in this
17 subsection no longer applies, and shall make the payment of the non-
18 residential development fee, in that event, within three years after that
19 event or after the issuance of the final certificate of occupancy of the
20 non-residential development whichever is later.

21 For purposes of this subsection, "recreational facilities and
22 community center" means any indoor or outdoor buildings, spaces,
23 structures, or improvements intended for active or passive recreation,
24 including but not limited to ball fields, meeting halls, and classrooms,
25 accommodating either organized or informal activity; and "senior
26 center" means any recreational facility or community center with
27 activities and services oriented towards serving senior citizens.

28 If a property which was exempted from the collection of a non-
29 residential development fee thereafter ceases to be exempt from
30 property taxation, the owner of the property shall remit the fees
31 required pursuant to this section within 45 days of the termination of
32 the property tax exemption. Unpaid non-residential development fees
33 under these circumstances may be enforceable by the municipality as a
34 lien against the real property of the owner.

35 c. (1) Unless authorized to pay directly to the municipality in
36 which the non-residential construction is occurring in accordance with
37 paragraph (2) of this subsection, developers shall pay non-residential
38 development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-
39 329.1 et al.) to the Treasurer, in accordance with subsection g. of this
40 section in a manner and on such forms as required by the Treasurer,
41 provided that a certified proof concerning the payment shall be
42 furnished by the Treasurer, to the municipality.

43 (2) The **【council】** department shall maintain on its Internet
44 website a list of each municipality that is authorized to use the
45 development fees collected pursuant to this section and that has a
46 confirmed status of compliance with the "Fair Housing Act,"
47 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of seeking
48 compliance certification, which compliance shall include a spending

1 plan **【authorized by the council】** pursuant to section 8 of P.L.2008,
2 c.46 (C.52:27D-329.2) for all development fees collected.

3 (3) No later than 90 days following the enactment of P.L. , c.
4 (C.) (pending before the Legislature as this bill), any municipality
5 that is or has been authorized to retain and expend non-residential
6 development fees shall provide the department with a detailed
7 accounting of all such fees that have been collected and expended
8 since the inception of the municipal authorization to collect and retain
9 said fees.

10 (4) Beginning with the year after the enactment of P.L. , c.
11 (C.) (pending before the Legislature as this bill), by ²【January】
12 February² 15, every municipality that is or has been authorized to
13 retain and expend non-residential development fees shall provide the
14 department with a detailed accounting of all such fees that have been
15 collected and expended previous year.

16 d. The payment of non-residential development fees required
17 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
18 through C.40:55D-8.7) shall be made prior to the issuance of a
19 certificate of occupancy for such development. A final certificate of
20 occupancy shall not be issued for any non-residential development
21 until such time as the fee imposed pursuant to this section has been
22 paid by the developer. A non-residential developer may deposit with
23 the appropriate entity the development fees as calculated by the
24 municipality under protest, and the local code enforcement official
25 shall thereafter issue the certificate of occupancy provided that the
26 construction is otherwise eligible for a certificate of occupancy.

27 e. The construction official responsible for the issuance of a
28 building permit shall notify the local tax assessor of the issuance of the
29 first building permit for a development which may be subject to a non-
30 residential development fee. Within 90 days of receipt of that notice,
31 the municipal tax assessor, based on the plans filed, shall provide an
32 estimate of the equalized assessed value of the non-residential
33 development. The construction official responsible for the issuance of
34 a final certificate of occupancy shall notify the local assessor of any
35 and all requests for the scheduling of a final inspection on property
36 which may be subject to a non-residential development fee. Within 10
37 business days of a request for the scheduling of a final inspection, the
38 municipal assessor shall confirm or modify the previously estimated
39 equalized assessed value of the improvements of the non-residential
40 development in accordance with the regulations adopted by the
41 Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the
42 non-residential development fee pursuant to sections 32 through 38 of
43 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter
44 notify the developer of the amount of the non-residential development
45 fee. Should the municipality fail to determine or notify the developer
46 of the amount of the non-residential development fee within 10
47 business days of the request for final inspection, the developer may
48 estimate the amount due and pay that estimated amount consistent with

1 the dispute process set forth in subsection b. of section 37 of P.L.2008,
2 c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential
3 development fee, provided the developer is in full compliance with all
4 other applicable laws, the municipality shall issue a final certificate of
5 occupancy for the subject property. Failure of the municipality to
6 comply with the timeframes or procedures set forth in this subsection
7 may subject it to penalties to be imposed by the commissioner; any
8 penalties so imposed shall be deposited into the "New Jersey
9 Affordable Housing Trust Fund" established pursuant to section 20 of
10 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46
11 (C.52:27D-320).

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

16 Non-residential construction which is connected with the
17 relocation of the facilities of a for-profit hospital shall be subject to the
18 fee authorized to be imposed under this section to the extent of the
19 increase in equalized assessed valuation in accordance with regulations
20 to be promulgated by the Director of the Division of Taxation,
21 Department of the Treasury.

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

31 g. The Treasurer shall credit to the "Urban Housing Assistance
32 Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-
33 329.7) annually from the receipts of the fees authorized to be imposed
34 pursuant to this section an amount equal to \$20 million; all receipts in
35 excess of this amount shall be deposited into the "New Jersey
36 Affordable Housing Trust Fund," established pursuant to section 20 of
37 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46
38 (C.52:27D-320), to be used for the purposes of that fund.

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

44
45 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to
46 read as follows:

47 36. a. The commissioner **【**, in consultation with the council,**】**
48 shall promulgate, in accordance with the provisions of the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), such regulations as are necessary for the prompt and effective
3 implementation of the provisions and purposes of **【P.L.2008, c.46**
4 **(C.52:27D-329.1 et al.)】** section 8 of P.L.2008, c.46 (C.52:27D-
5 329.2), including, but not limited to, provisions for the payment of
6 any necessary administrative costs related to the assessment of
7 properties and collection of any development fees by a
8 municipality.

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

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

19

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

22 38. a. Except as expressly provided in P.L.2008, c.46
23 (C.52:27D-329.1 et al.),₂ including subsection b. of this section, any
24 provision of a local ordinance which imposes a fee for the
25 development of affordable housing upon a developer of non-
26 residential property, including any and all development fee
27 ordinances adopted in accordance with any regulations of the
28 **【Council on Affordable Housing】** department, or any provision of
29 an ordinance which imposes an obligation relating to the provision
30 of housing affordable to **【low and moderate income】** low- and
31 moderate-income households, or payment in-lieu of building as a
32 condition of non-residential development, shall be void and of no
33 effect. A provision of an ordinance which imposes a development
34 fee which is not prohibited by any provision of P.L.2008, c.46
35 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

36 b. No affordable housing obligation shall be imposed
37 concerning a mixed use development that would result in an
38 affordable housing obligation greater than that which would have
39 been imposed if the residential portion of the mixed use
40 development had been developed independently of the non-
41 residential portion of the mixed use development.

42 c. Whenever the developer of a non-residential development
43 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
44 committed itself to make a financial or other contribution relating to
45 the provision of housing affordable to low and moderate income
46 households, the non-residential development fee authorized
47 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied

1 through the investment obligations made pursuant to P.L.1977,
2 c.110 (C.5:12-1 et seq.).
3 (cf: P.L.2008, c.46, s.38)
4

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

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

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

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

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

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

44 e. [Notwithstanding the provisions of subsections a., b., c., and
45 d. of this section, if, on the effective date of P.L.2009, c.90
46 (C.52:27D-489a et al.), a municipality that has returned all or a
47 portion of non-residential fees in accordance with subsection a. or
48 b. of this section shall be reimbursed from the funds available

1 through the appropriation made into the "New Jersey Affordable
2 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
3 (C.52:27D-320.1) within 30 days of the municipality providing
4 written notice to the Council on Affordable Housing. **】** (Deleted by
5 amendment, P.L. , c.) (pending before the Legislature as this
6 bill)

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

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

25

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

28 3. a. There is established in, but not of, the department a Site
29 Improvement Advisory Board, to devise statewide site improvement
30 standards pursuant to section 4 of **【this act】** P.L.1993, c.32
31 (C.40:55D-40.4). The board shall consist of the commissioner or
32 **【his】** the commissioner's designee, who shall be a non-voting
33 member of the board, the Director of the Division of **【Housing】**
34 Codes and Standards in the Department of Community Affairs, who
35 shall be a voting member of the board, the Executive Director of the
36 New Jersey Housing and Mortgage Finance Agency, or the
37 executive director's designee, who shall be a voting member of the
38 board, and **【10】** nine other voting members, to be appointed by the
39 commissioner. The other members shall include two professional
40 planners, one of whom serves as a planner for a governmental entity
41 or whose professional experience is predominantly in the public
42 sector and who has worked in the public sector for at least the
43 previous five years and the other of whom serves as a planner in
44 private practice and has particular expertise in private residential
45 development and has been involved in private sector planning for at
46 least the previous five years, and one representative each from:

47 (1) The New Jersey Society of Professional Engineers;

- 1 (2) The New Jersey Society of Municipal Engineers;
2 (3) The New Jersey Association of County Engineers;
3 (4) The New Jersey Federation of Planning Officials;
4 (5) **【The Council on Affordable Housing】** (Deleted by
5 amendment, P.L. , c. (pending before the Legislature as this
6 bill);
7 (6) The New Jersey Builders' Association;
8 (7) The New Jersey Institute of Technology;
9 (8) The New Jersey State League of Municipalities.
- 10 b. Among the members to be appointed by the commissioner
11 who are first appointed, four shall be appointed for terms of two
12 years each, four shall be appointed for terms of three years each,
13 and two shall be appointed for terms of four years each. Thereafter,
14 each appointee shall serve for a term of four years. Vacancies in
15 the membership shall be filled in the same manner as original
16 appointments are made, for the unexpired term. The **【commission】**
17 board shall select a chair from among its members **【a chairman】**.
18 Members may be removed by the commissioner for cause.
- 19 c. Board members shall serve without compensation, but may
20 be entitled to reimbursement, from moneys appropriated or
21 otherwise made available for the purposes of this act, for expenses
22 incurred in the performance of their duties.
23 (cf: P.L.1993, c.32, s.3)
24
- 25 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to
26 read as follows:
- 27 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):
28 "Bonds" means any bonds, notes, interim certificates, debentures
29 or other obligations issued by a municipality, county,
30 redevelopment entity, or housing authority pursuant to P.L.1992,
31 c.79 (C.40A:12A-1 et al.).
32 "Comparable, affordable replacement housing" means newly-
33 constructed or substantially rehabilitated housing to be offered to a
34 household being displaced as a result of a redevelopment project,
35 that is affordable to that household based on its income under the
36 guidelines established by the **【Council on Affordable Housing in**
37 **the Department of Community Affairs】** New Jersey Housing and
38 Mortgage Finance Agency for maximum affordable sales prices or
39 maximum fair market rents, and that is comparable to the
40 household's dwelling in the redevelopment area with respect to the
41 size and amenities of the dwelling unit, the quality of the
42 neighborhood, and the level of public services and facilities offered
43 by the municipality in which the redevelopment area is located.
- 44 "Development" means the division of a parcel of land into two or
45 more parcels, the construction, reconstruction, conversion,
46 structural alteration, relocation, or enlargement of any building or
47 other structure, or of any mining, excavation or landfill, and any use

1 or change in the use of any building or other structure, or land or
2 extension of use of land, for which permission may be required
3 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
4 (C.40:55D-1 et seq.).

5 "Electric vehicle charging station" means an electric component
6 assembly or cluster of component assemblies designed specifically
7 to charge batteries within electric vehicles by permitting the transfer
8 of electric energy to a battery or other storage device in an electric
9 vehicle.

10 "Governing body" means the body exercising general legislative
11 powers in a county or municipality according to the terms and
12 procedural requirements set forth in the form of government
13 adopted by the county or municipality.

14 "Housing authority" means a housing authority created or
15 continued pursuant to this act.

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

30 "Parking authority" means a public corporation created pursuant
31 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et
32 seq.), and authorized to exercise redevelopment powers within the
33 municipality.

34 "Persons of **【low and moderate income】** low- and moderate-
35 income" means persons or families who are, in the case of State
36 assisted projects or programs, so defined by the **【Council on**
37 **Affordable Housing in the Department of Community Affairs】** New
38 Jersey Housing and Mortgage Finance Agency, or in the case of
39 federally assisted projects or programs, defined as of **【"low and**
40 **very low income"】** "low- and very low-income" by the United
41 States Department of Housing and Urban Development.

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

44 "Public electric vehicle charging station" means an electric
45 vehicle charging station located at a publicly available parking
46 space.

1 "Public housing" means any housing for persons of [low and
2 moderate income] low- and moderate-income owned by a
3 municipality, county, the State or the federal government, or any
4 agency or instrumentality thereof.

5 "Public hydrogen fueling station" means publicly available
6 equipment to store and dispense hydrogen fuel to vehicles
7 according to industry codes and standards.

8 "Publicly assisted housing" means privately owned housing
9 which receives public assistance or subsidy, which may be grants or
10 loans for construction, reconstruction, conservation, or
11 rehabilitation of the housing, or receives operational or maintenance
12 subsidies either directly or through rental subsidies to tenants, from
13 a federal, State or local government agency or instrumentality.

14 "Publicly available parking space" means a parking space that is
15 available to, and accessible by, the public and may include on-street
16 parking spaces and parking spaces in surface lots or parking
17 garages, but shall not include: a parking space that is part of, or
18 associated with, a private residence; or a parking space that is
19 reserved for the exclusive use of an individual driver or vehicle or
20 for a group of drivers or vehicles, such as employees, tenants,
21 visitors, residents of a common interest development, or residents
22 of an adjacent building.

23 "Real property" means all lands, including improvements and
24 fixtures thereon, and property of any nature appurtenant thereto or
25 used in connection therewith, and every estate, interest and right,
26 legal or equitable, therein, including terms for years and liens by
27 way of judgment, mortgage or otherwise, and indebtedness secured
28 by such liens.

29 "Redeveloper" means any person, firm, corporation or public
30 body that shall enter into or propose to enter into a contract with a
31 municipality or other redevelopment entity for the redevelopment or
32 rehabilitation of an area in need of redevelopment, or an area in
33 need of rehabilitation, or any part thereof, under the provisions of
34 this act, or for any construction or other work forming part of a
35 redevelopment or rehabilitation project.

36 "Redevelopment" means clearance, replanning, development and
37 redevelopment; the conservation and rehabilitation of any structure
38 or improvement, the construction and provision for construction of
39 residential, commercial, industrial, public or other structures and
40 the grant or dedication of spaces as may be appropriate or necessary
41 in the interest of the general welfare for streets, parks, playgrounds,
42 or other public purposes, including recreational and other facilities
43 incidental or appurtenant thereto, in accordance with a
44 redevelopment plan.

45 "Redevelopment agency" means a redevelopment agency created
46 pursuant to subsection a. of section 11 of P.L.1992, c.79
47 (C.40A:12A-11) or established heretofore pursuant to the
48 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et

1 al.), repealed by this act, which has been permitted in accordance
2 with the provisions of **【this act】** P.L.1992, c.79 (C.40A:12A-1 et
3 seq.) to continue to exercise its redevelopment functions and
4 powers.

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

17 "Redevelopment entity" means a municipality or an entity
18 authorized by the governing body of a municipality pursuant to
19 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
20 implement redevelopment plans and carry out redevelopment
21 projects in an area in need of redevelopment, or in an area in need
22 of rehabilitation, or in both.

23 "Redevelopment plan" means a plan adopted by the governing
24 body of a municipality for the redevelopment or rehabilitation of all
25 or any part of a redevelopment area, or an area in need of
26 rehabilitation, which plan shall be sufficiently complete to indicate
27 its relationship to definite municipal objectives as to appropriate
28 land uses, public transportation and utilities, recreational and
29 municipal facilities, and other public improvements; and to indicate
30 proposed land uses and building requirements in the redevelopment
31 area or area in need of rehabilitation, or both.

32 "Redevelopment project" means any work or undertaking
33 pursuant to a redevelopment plan; such undertaking may include
34 any buildings, land, including demolition, clearance or removal of
35 buildings from land, equipment, facilities, or other real or personal
36 properties which are necessary, convenient, or desirable
37 appurtenances, such as but not limited to streets, sewers, utilities,
38 parks, site preparation, landscaping, and administrative, community,
39 health, recreational, educational, and welfare facilities, and zero-
40 emission vehicle fueling and charging infrastructure.

41 "Rehabilitation" means an undertaking, by means of extensive
42 repair, reconstruction or renovation of existing structures, with or
43 without the introduction of new construction or the enlargement of
44 existing structures, in any area that has been determined to be in
45 need of rehabilitation or redevelopment, to eliminate substandard
46 structural or housing conditions and arrest the deterioration of that
47 area.

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

4 "Zero-emission vehicle" means a vehicle certified as a zero
5 emission vehicle pursuant to the California Air Resources Board
6 zero emission vehicle standards for the applicable model year,
7 including but not limited to, battery electric-powered vehicles and
8 hydrogen fuel cell vehicles.

9 "Zero-emission vehicle fueling and charging infrastructure"
10 means infrastructure to charge or fuel zero-emission vehicles,
11 including but not limited to, public electric vehicle charging
12 stations and public hydrogen fueling stations.

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

14
15 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to
16 read as follows:

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

21 (1) Plan, construct, own, and operate housing projects; maintain,
22 reconstruct, improve, alter, or repair any housing project or any part
23 thereof; and for these purposes, receive and accept from the State or
24 federal government, or any other source, funds or other financial
25 assistance;

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

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

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

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

37 (6) Cooperate with any other municipality, private, county, State
38 or federal entity to provide funds to the municipality or other
39 governmental entity and to homeowners, tenant associations,
40 nonprofit or private developers to acquire, construct, rehabilitate or
41 operate publicly assisted housing, and to provide rent subsidies for
42 persons of **low and moderate income** ~~low- and moderate-income~~,
43 including the elderly, pursuant to applicable State or federal
44 programs;

45 (7) Encourage the use of demand side subsidy programs such as
46 certificates and vouchers for low-income families and promote the
47 use of project based certificates which provide subsidies for units in

1 newly constructed and substantially rehabilitated structures, and of
2 tenant based certificates which subsidize rent in existing units;

3 (8) Cooperate with any State or federal entity to secure
4 mortgage assistance for any person of **low or moderate income**
5 low- or moderate-income;

6 (9) Provide technical assistance and support to nonprofit
7 organizations and private developers interested in constructing **low**
8 **and moderate income** low- and moderate-income housing;

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

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

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

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

25

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

28 10. A municipality's housing element shall be designed to achieve
29 the goal of access to affordable housing to meet present and
30 prospective housing needs, with particular attention to **low and**
31 **moderate income** low- and moderate-income housing, and shall
32 contain at least:

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

42 b. A projection of the municipality's housing stock, including the
43 probable future construction of **low and moderate income** low- and
44 moderate-income housing, for the next ten years, taking into account,
45 but not necessarily limited to, construction permits issued, approvals
46 of applications for development and probable residential development
47 of lands;

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

4 d. An analysis of the existing and probable future employment
5 characteristics of the municipality;

6 e. A determination of the municipality's present and prospective
7 fair share for **[low and moderate income]** low- and moderate-income
8 housing and its capacity to accommodate its present and prospective
9 housing needs, including its fair share for **[low and moderate income]**
10 low- and moderate-income housing, as established pursuant to section
11 3 of P.L. , c. (C.) (pending before the Legislature as this bill);

12 f. A consideration of the lands that are most appropriate for
13 construction of **[low and moderate income]** low- and moderate-
14 income housing and of the existing structures most appropriate for
15 conversion to, or rehabilitation for, **[low and moderate income]** low-
16 and moderate-income housing, including a consideration of lands of
17 developers who have expressed a commitment to provide **[low and**
18 **moderate income]** low- and moderate-income housing; ²**[and]**²

19 g. An analysis of the extent to which municipal ordinances and
20 other local factors advance or detract from the goal of preserving
21 multigenerational family continuity as expressed in the
22 recommendations of the Multigenerational Family Housing Continuity
23 Commission, adopted pursuant to paragraph (1) of subsection f. of
24 section 1 of P.L.2021, c.273 (C.52:27D-329.20) ²;

25 h. For a municipality located within the jurisdiction of the
26 Highlands Water Protection and Planning Council, established
27 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of
28 compliance of the housing element with the Highlands Regional
29 Master Plan of lands in the Highlands Preservation Area, and lands in
30 the Highlands Planning Area for Highlands-conforming
31 municipalities. This analysis shall include consideration of the
32 municipality's most recent Highlands Municipal Build Out Report,
33 consideration of opportunities for redevelopment of existing developed
34 lands into inclusionary or 100 percent affordable housing, or both, and
35 opportunities for 100 percent affordable housing in both the Highlands
36 Planning Area and Highlands Preservation Area that are consistent
37 with the Highlands regional master plan; and

38 i. An analysis of consistency with the State Development and
39 Redevelopment Plan, including water, wastewater, stormwater, and
40 multi-modal transportation based on guidance and technical assistance
41 from the State Planning Commission².

42 (cf: P.L.2021, c.273, s.2)

43
44 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
45 read as follows:

46 1. Any municipality that receives an adjustment of its prospective
47 need obligations for the fourth round or subsequent rounds based on a

1 lack of vacant land shall as part of the process of adopting and
2 implementing its housing element and fair share plan identify
3 sufficient parcels likely to redevelop during the current round of
4 obligations to address at least 25 percent of the prospective need
5 obligation that has been adjusted, and adopt realistic zoning that
6 allows for such adjusted obligation, or demonstrate why the
7 municipality is unable to do so. When computing a municipal
8 adjustment regarding available land resources as part of the
9 determination of a municipality's fair share of affordable housing, the
10 **【Council on Affordable Housing】** municipality, in filing a housing
11 element and fair share plan pursuant to subsection f. of section 3 of
12 P.L. , c. (C. and C.) (pending before the Legislature as
13 this bill), shall exclude from designating , and the process set forth
14 pursuant to sections 3 and 4 of P.L. , c. (C. and C.)
15 (pending before the Legislature as this bill) shall confirm was correctly
16 excluded, as vacant land:

17 (a) any land that is owned by a local government entity that as of
18 January 1, 1997, has adopted, prior to the institution of a lawsuit
19 seeking a builder's remedy or prior to the filing of a petition for
20 substantive certification of a housing element and fair share plan, a
21 resolution authorizing an execution of agreement that the land be
22 utilized for a public purpose other than housing;

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

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

35 (d) historic and architecturally important sites listed on the State
36 Register of Historic Places or National Register of Historic Places
37 prior to the **【submission of the petition of substantive certification】**
38 date of filing a housing element and fair share plan pursuant to section
39 3, or initiation of an action pursuant to section 4 of P.L. , c. (C.
40 or C.) (pending before the Legislature as this bill);

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

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

45 (g) environmentally sensitive lands where development is
46 prohibited by any State or federal agency ², including, but not limited
47 to, the Highlands Water Protection and Planning Council, established

1 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the
2 Highlands Preservation Area, and lands in the Highlands Planning
3 Area for Highlands-conforming municipalities².

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

7

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

10 11. a. In adopting its housing element, the municipality may
11 provide for its fair share of **low and moderate income** low- and
12 moderate-income housing by means of any technique or combination
13 of techniques which provide a realistic opportunity for the provision of
14 the fair share. The housing element shall contain an analysis
15 demonstrating that it will provide such a realistic opportunity, and the
16 municipality shall establish that its land use and other relevant
17 ordinances have been revised to incorporate the provisions for **low**
18 **and moderate income** low- and moderate-income housing. In
19 preparing the housing element, the municipality shall consider the
20 following techniques for providing **low and moderate income** low-
21 and moderate-income housing within the municipality, as well as such
22 other appropriate techniques as have been established through
23 applicable precedent and may be **published by the council or**
24 **proposed** employed by the municipality:

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

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

32 (3) Determination of measures that the municipality will take to
33 assure that **low and moderate income** low- and moderate-income
34 units remain affordable to **low and moderate income** low- and
35 moderate-income households for an appropriate period of not less than
36 **six years** the period required by the regulations adopted by the
37 Department of Community Affairs pursuant to section 21 of P.L.1985,
38 c.222 (C.52:27D-321);

39 (4) A plan for infrastructure expansion and rehabilitation and
40 conversion or redevelopment of unused or underutilized real property,
41 including existing structures, if necessary to assure the achievement of
42 the municipality's fair share of **low and moderate income** low- and
43 moderate-income housing;

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

- 1 (6) Tax abatements for purposes of providing **low and moderate**
2 **income** low- and moderate-income housing;
- 3 (7) Utilization of funds obtained from any State or federal subsidy
4 toward the construction of **low and moderate income** low- and
5 moderate-income housing;
- 6 (8) Utilization of municipally generated funds toward the
7 construction of **low and moderate income** low- and moderate-
8 income housing; and
- 9 (9) The purchase of privately owned real property used for
10 residential purposes at the value of all liens secured by the property,
11 excluding any tax liens, notwithstanding that the total amount of debt
12 secured by liens exceeds the appraised value of the property, pursuant
13 to regulations promulgated by the Commissioner of Community
14 Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126
15 (C.52:27D-311.2).
- 16 b. The municipality may provide for a phasing schedule for the
17 achievement of its fair share of **low and moderate income** low- and
18 moderate-income housing.
- 19 c. (Deleted by amendment, P.L.2008, c.46)
- 20 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require
21 a municipality to raise or expend municipal revenues in order to
22 provide **low and moderate income** low- and moderate-income
23 housing.
- 24 e. When a municipality's housing element includes the provision
25 of rental housing units in a community residence for the
26 developmentally disabled, for the mentally ill, or for persons with
27 head injuries, as those terms are defined in section 2 of P.L.1977,
28 c.448 (C.30:11B-2), or in transitional housing, which will be
29 affordable to persons of **low and moderate income** low- and
30 moderate-income, and for which adequate measures to retain such
31 affordability pursuant to paragraph (3) of subsection a. of this section
32 are included in the housing element, those housing units shall be fully
33 credited **as permitted under the rules of the council** towards the
34 fulfillment of the municipality's fair share of **low and moderate**
35 **income** low- and moderate-income housing. A municipality shall not
36 credit transitional housing units towards more than 10 percent of the
37 municipality's fair share obligation.
- 38 f. It having been determined by the Legislature that the provision
39 of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is a public
40 purpose, a municipality or municipalities may utilize public monies to
41 make donations, grants or loans of public funds for the rehabilitation
42 of deficient housing units and the provision of new or substantially
43 rehabilitated housing for **low and moderate income** low- and
44 moderate-income persons, providing that any private advantage is
45 incidental.
- 46 g. A municipality **which** that has received **substantive**
47 **certification from the council** approval of its housing element and fair

1 share plan for the current round, and **【which】** that has actually effected
2 the construction of the affordable housing units it is obligated to
3 provide, may amend its affordable housing element or zoning
4 ordinances without **【the approval of the council】** losing immunity
5 from ¹**【builder’s remedy】** exclusionary zoning¹ litigation.

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

11 i. **【The council, upon the application of a】** A municipality and a
12 developer **【,** may **【approve】** request a modification of a compliance
13 certification involving reduced affordable housing set-asides or
14 increased densities to ensure the economic feasibility of an
15 inclusionary development , if any such application demonstrates how
16 any shortfall in meeting the municipal fair share obligation will then
17 be addressed. Such a request may be granted only if the municipality
18 and developer have demonstrated that the project has been impacted
19 by market conditions beyond their reasonable control.

20 j. A municipality may enter into an agreement with a developer
21 or residential development owner to provide a preference for
22 affordable housing to **【low and moderate income】** low- and moderate-
23 income veterans who served in time of war or other emergency, as
24 defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50
25 percent of the affordable units in that particular project. This
26 preference shall be established in the applicant selection process for
27 available affordable units so that applicants who are veterans who
28 served in time of war or other emergency, as referenced in this
29 subsection, and who apply within 90 days of the initial marketing
30 period shall receive preference for the rental of the agreed-upon
31 percentage of affordable units. After the first 90 days of the initial
32 120-day marketing period, if any of those units subject to the
33 preference remain available, then applicants from the general public
34 shall be considered for occupancy. Following the initial 120-day
35 marketing period, previously qualified applicants and future qualified
36 applicants who are veterans who served in time of war or other
37 emergency, as referenced in this subsection, shall be placed on a
38 special waiting list as well as the general waiting list. The veterans on
39 the special waiting list shall be given preference for affordable units,
40 as the units become available, whenever the percentage of preference-
41 occupied units falls below the agreed upon percentage. Any
42 agreement to provide affordable housing preferences for veterans
43 pursuant to this subsection shall not affect a municipality's ability to
44 receive credit for the unit **【from the council, or its successor】**.

45 k. In the fourth round, and in subsequent rounds of affordable
46 housing obligations, a municipality shall be able to receive one credit
47 against its affordable housing obligation for each unit of low- or

1 moderate-income housing, and shall not receive bonus credit for any
2 particular type of low- or moderate-income housing, unless authority
3 to obtain bonus credit is expressly provided pursuant to this section, or
4 other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
5 301 et al.). A municipality shall not receive more than one type of
6 bonus credit for any unit, and a municipality shall not be permitted to
7 satisfy more than 25 percent of its prospective need obligation in the
8 fourth round or any subsequent round through the use of bonus credits.
9 This subsection shall not be construed to limit the ability of a
10 municipality to receive a unit of credit for a low- or moderate-income
11 housing unit that is subject to affordability controls that are scheduled
12 to expire, but are extended ¹[in accordance with the Uniform Housing
13 Affordability Controls promulgated by the New Jersey Housing and
14 Mortgage Finance Agency] pursuant to section 21 of P.L.1985, c.222
15 (C.52:27D-321)¹, to the extent that this affordability control extension
16 would otherwise generate this credit. As a part of a fair share plan and
17 housing element adopted pursuant to subsection f. of section 3 of
18 P.L. , c. (C.) (pending before the Legislature as this bill), a
19 municipality shall:

20 (1) receive one unit of credit and one bonus credit for each unit of
21 low- or moderate-income housing for individuals with special needs or
22 permanent supportive housing, as those terms are defined in section 2
23 of P.L. 2004, c.70 (C.34:1B-21.24);

24 (2) receive one unit of credit and one-half bonus credit for each
25 low- or moderate-income ownership unit created in partnership
26 sponsorship with a non-profit housing developer;

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

38 (4) receive one unit of credit and one-half bonus credit for a unit
39 of age-restricted housing, provided that a bonus credit for age-
40 restricted housing shall not be applied to more than ¹[15] 10¹ percent
41 of the units of age-restricted housing constructed in compliance with
42 the Uniform Housing Affordability Controls promulgated by the New
43 Jersey Housing and Mortgage Finance Agency in a municipality that
44 count towards the municipality's affordable housing obligation for any
45 single 10-year round of affordable housing obligations;

46 (5) receive one unit of credit and one-half bonus credit for each
47 unit of low- or moderate-income family housing with at least three
48 bedrooms above the minimum number required by the bedroom

1 distribution ¹[in a given development] . This bonus credit shall be
2 calculated by taking into account the full municipal fair share plan and
3 housing element, and the number of units with at least three bedrooms
4 required for projects satisfying the minimum 50 percent family
5 housing requirements. A municipality shall receive the bonus credit
6 pursuant to this paragraph for each unit with at least three bedrooms
7 that are above the minimum number required for the bedroom
8 distribution determined pursuant to the Uniform Housing Affordability
9 Controls promulgated by the New Jersey Housing and Mortgage
10 Finance Agency¹:

11 (6) receive one unit of credit and one-half bonus credit for a unit
12 of low- or moderate-income housing constructed on land that is or was
13 previously developed and utilized for retail, office, or commercial
14 space;

15 (7) receive one unit of credit and one-half bonus credit for each
16 existing low- or moderate-income rental housing unit for which
17 affordability controls are extended for a new term of affordability, in
18 compliance with the Uniform Housing Affordability Controls
19 promulgated by the New Jersey Housing and Mortgage Finance
20 Agency, and the municipality contributes funding towards the costs
21 necessary for this preservation;

22 (8) receive one unit of credit and ¹[one-half] one¹ bonus credit for
23 each unit of low- or moderate-income housing in a 100 percent
24 affordable housing project ¹[toward] for¹ which the municipality
25 ¹[either contributes property without which the project would not be
26 feasible, or makes contributions from the municipal affordable housing
27 trust fund that cover no less than 10 percent of the project cost]
28 contributes toward the costs of the project. This contribution may
29 consist of: (a) real property donations that enable siting and
30 construction of the project; or (b) contributions from the municipal
31 affordable housing trust fund in support of the project, if the
32 contribution consists of no less than three percent of the project cost¹;
33 ¹[and]¹

34 (9) receive one unit of credit and one-half bonus credit for each
35 unit of very low-income housing for families above the 13 percent of
36 units required to be reserved for very low-income housing pursuant to
37 section 7 of P.L.2008, c.46 (C.52:27D-329.1). ¹In accordance with
38 section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not
39 be required to provide that a specific percentage of the units in any
40 specific project be reserved as very low-income housing in order to
41 obtain this bonus credit, and the 13 percent level, for the purpose of
42 bonus credits, shall be calculated against the full prospective need
43 obligation provided pursuant to the fair share plan; and

44 (10) receive one unit of credit and one bonus credit for each unit
45 of low- or moderate-income housing created by transforming an
46 existing rental or ownership unit from a market rate unit to an
47 affordable housing unit. A municipality may only rely on this bonus

1 credit as part of its fair share plan and housing element if the
2 municipality demonstrates that a commitment to follow through with
3 this market to affordable agreement has been made and: (a) this
4 agreement has been signed by the property owner; or (b) the
5 municipality has obtained ownership of the property.¹

6 l. A municipality may not satisfy more than ~~1~~**[25]** 30¹ percent of
7 the affordable housing units, exclusive of any bonus credits, to address
8 its prospective need affordable housing obligation through the creation
9 of age-restricted housing. A municipality shall satisfy a minimum of
10 50 percent of the actual affordable housing units, exclusive of any
11 bonus credits, created to address its prospective need affordable
12 housing obligation through the creation of housing available to
13 families with children and otherwise in compliance with the
14 requirements and controls established pursuant to section 21 of
15 P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a
16 minimum of 25 percent of the actual affordable housing units,
17 exclusive of any bonus credits, to address its prospective need
18 affordable housing obligation, through rental housing, including at
19 least half of that number available to families with children. All units
20 referred to in this section shall otherwise be in compliance with the
21 requirements and controls established pursuant to section 21 of
22 P.L.1985, c.222 (C.52:27D-321).

23 m. All parties shall be entitled to rely upon regulations on
24 municipal credits, adjustments, and compliance mechanisms adopted
25 by the Council on Affordable Housing unless those regulations are
26 contradicted by statute, including but not limited to P.L. , c.
27 (C.) (pending before the Legislature as this bill), or binding court
28 decisions.

29 ²n. P.L. , c. (C.) (pending before the Legislature as this
30 bill) shall not be construed to require a municipality to fund
31 infrastructure improvements for affordable housing projects beyond
32 any commitments made in a fair share plan and housing element that
33 has been provided with compliance certification. A municipality may
34 fund infrastructure improvements for affordable housing projects,
35 through the adoption of a development agreement with the applicant,
36 beyond any commitments made in a fair share plan and housing
37 element that has been provided with compliance certification.²

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

39
40 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to
41 read as follows:

42 6. **【The council】** A municipality may take such measures as are
43 necessary to assure compliance with the adaptability requirements
44 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including
45 the inspection of those units which are newly constructed and receive
46 housing credit as provided under section 1 of P.L.2005, c.350
47 (C.52:27D-311a) for adaptability, as part of the monitoring which

1 occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing
2 unit subject to the provisions of section 5 of P.L.2005, c.350
3 (C.52:27D-123.15) and to the provisions of the barrier free subcode
4 adopted by the Commissioner of Community Affairs pursuant to the
5 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-
6 119 et seq.) shall be eligible for inclusion in a municipal fair share plan
7 unless the unit complies with the requirements set forth thereunder. If
8 any units for which credit was granted in accordance with the
9 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to
10 conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et
11 al.), **[the council may]** any party representing the interests of
12 households with disabilities may seek a modification to the approval of
13 the municipal fair share plan to require the municipality to amend its
14 fair share plan within 90 days of [receiving notice from the council]
15 such a finding, to address its fair share obligation pursuant to
16 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the
17 municipality fails to amend its fair share plan within 90 days of
18 [receiving such notice, the council may revoke substantive
19 certification] such a finding, the municipality shall lose immunity to
20 ¹[a builder's remedy] exclusionary zoning litigation¹ for the portion
21 of its obligation that is found not to conform to the requirements of
22 P.L.2005, c.350 (C.52:27D-311a et al.).
23 (cf: P.L.2005, c.350, s.6)

24
25 26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
26 read as follows:

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

1 of the monies available in the fund for the payment of any
2 necessary administrative costs related to the administration of the
3 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any
4 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et
5 al.).

6 a. Except as permitted pursuant to subsection g. of this section,
7 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
8 commissioner shall award grants or loans from this fund for
9 housing projects and programs in municipalities whose housing
10 elements have **received substantive certification from the council,**
11 obtained compliance certification pursuant to section 3 of P.L. , c.
12 (C.) (pending before the Legislature as this bill), or in
13 municipalities receiving State aid pursuant to P.L.1978, c.14
14 (C.52:27D-178 et seq.) **],** in municipalities subject to a builder's
15 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),
16 or in receiving municipalities in cases where the council has
17 approved a regional contribution agreement and a project plan
18 developed by the receiving municipality**].**

19 Of those monies deposited into the "New Jersey Affordable
20 Housing Trust Fund" that are derived from municipal development
21 fee trust funds, or from available collections of Statewide non-
22 residential development fees, a priority for funding shall be
23 established for projects in municipalities that have **petitioned the**
24 **council for substantive** received compliance certification.

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

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

33 c. For any period which the **council** commissioner may
34 approve, the commissioner may assist affordable housing programs
35 **which** that are **not** located in municipalities **whose housing**
36 elements have been granted substantive certification or which are
37 not in furtherance of a regional contribution agreement **that have a**
38 pending request for compliance certification; provided that the
39 affordable housing program will meet all or part of a municipal
40 **low and moderate income** low- and moderate-income housing
41 obligation.

42 d. Amounts deposited in the "New Jersey Affordable Housing
43 Trust Fund" shall be targeted to regions based on the region's
44 percentage of the State's **low and moderate income** low- and
45 moderate-income housing need as determined **by the council**
46 pursuant to the low- and moderate-income household growth over
47 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.

1 (C. _____) (pending before the Legislature as this bill). Amounts in
2 the fund shall be applied for the following purposes in designated
3 neighborhoods:

4 (1) Rehabilitation of substandard housing units occupied or to
5 be occupied by **【low and moderate income】** low- and moderate-
6 income households;

7 (2) Creation of accessory **【apartments】** dwelling units to be
8 occupied by **【low and moderate income】** low- and moderate-
9 income households;

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

14 (4) Acquisition of real property, demolition and removal of
15 buildings, or construction of new housing that will be occupied by
16 **【low and moderate income】** low- and moderate-income households,
17 or any combination thereof;

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

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

32 (7) Other housing programs for **【low and moderate income】**
33 low- and moderate-income housing, including, without limitation,
34 (a) infrastructure projects directly facilitating the construction of
35 **【low and moderate income】** low- and moderate-income housing not
36 to exceed a reasonable percentage of the construction costs of the
37 **【low and moderate income】** low- and moderate-income housing to
38 be provided and (b) alteration of dwelling units occupied or to be
39 occupied by households of **【low or moderate income】** low- or
40 moderate-income and the common areas of the premises in which
41 they are located in order to make them accessible to persons with
42 disabilities.

43 e. Any grant or loan agreement entered into pursuant to this
44 section shall incorporate contractual guarantees and procedures by
45 which the division **【will】** shall ensure that any unit of housing
46 provided for **【low and moderate income】** low- and moderate-
47 income households shall continue to be occupied by **【low and**

1 moderate income] low- and moderate-income households for [at
2 least 20 years] a period that conforms to the requirements of
3 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)
4 following the award of the loan or grant, except that the division
5 may approve a guarantee for a period of less [than 20 years]
6 duration where necessary to ensure project feasibility.

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

25 g. In addition to other grants or loans awarded pursuant to this
26 section, and without regard to any limitations on such grants or
27 loans for any other purposes herein imposed, the commissioner
28 shall annually allocate such amounts as may be necessary in the
29 commissioner's discretion, and in accordance with section 3 of
30 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
31 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
32 287.1 et al.). Such rental assistance grants shall be deemed
33 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
34 301 et al.), in order to meet the housing needs of certain [low
35 income] low-income households who may not be eligible to occupy
36 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301
37 et al.).

38 h. The department and the State Treasurer shall submit the
39 "New Jersey Affordable Housing Trust Fund" for an audit annually
40 by the State Auditor or State Comptroller, at the discretion of the
41 Treasurer. In addition, the department shall prepare an annual
42 report for each fiscal year, and submit it by November 30th of each
43 year to the Governor and the Legislature, and the Joint Committee
44 on Housing Affordability, or its successor, and post the information
45 to its [web site] Internet website, of all activity of the fund,
46 including details of the grants and loans by number of units, number
47 and income ranges of recipients of grants or loans, location of the

1 housing renovated or constructed using monies from the fund, the
2 number of units upon which affordability controls were placed, and
3 the length of those controls. The report also shall include details
4 pertaining to those monies allocated from the fund for use by the
5 State rental assistance program pursuant to section 3 of P.L.2004,
6 c.140 (C.52:27D-287.3) and subsection g. of this section.

7 i. The commissioner may award or grant the amount of any
8 appropriation deposited in the "New Jersey Affordable Housing
9 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
10 320.1) to municipalities pursuant to the provisions of section 39 of
11 P.L.2009, c.90 (C.40:55D-8.8).
12 (cf: P.L.2017, c.131, s.200)

13
14 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to
15 read as follows:

16 21. The agency shall establish affordable housing programs to
17 assist municipalities in meeting the obligation of developing
18 communities to provide **[low and moderate income]** low- and
19 moderate-income housing.

20 a. Of the bond authority allocated to it under section 24 of
21 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a
22 reasonable period of time established by its board, no less than **[25%]**
23 25 percent to be used in conjunction with housing to be constructed or
24 rehabilitated with assistance under **[this act]** P.L.1985, c.222
25 (C.52:27D-301 et al.).

26 b. The agency shall to the extent of available funds, award
27 assistance to affordable housing programs located in municipalities
28 whose housing elements have **[received substantive]** obtained
29 compliance certification **[from the council]** , or which have been
30 subject to a builder's remedy **[or which are in furtherance of a regional**
31 **contribution agreement approved by the council]**. During **[the first 12**
32 **months from the effective date of this act and for]** any **[additional]**
33 period which the **[council]** agency may approve, the agency may
34 assist affordable housing programs **[which are not located in**
35 **municipalities whose housing elements have been granted substantive**
36 **certification or which are not in furtherance of a regional contribution**
37 **agreement]** that have a pending request for compliance certification;
38 provided the affordable housing program will meet all or in part a
39 municipal **[low and moderate income]** low- and moderate-income
40 housing obligation.

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

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

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

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

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

12 (4) Other housing programs for ~~low and moderate income~~ low-
13 and moderate-income housing, including infrastructure projects
14 directly facilitating the construction of ~~low and moderate income~~
15 low- and moderate-income housing; and

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

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

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

25 e. The agency shall establish procedures and guidelines
26 governing the qualifications of applicants, the application procedures
27 and the criteria for awarding grants and loans for affordable housing
28 programs and the standards for establishing the amount, terms and
29 conditions of each grant or loan.

30 f. ~~In consultation with the council, the~~ The agency , in
31 consultation with the department, shall establish requirements and
32 controls to ~~insure~~ ensure the maintenance of housing assisted under
33 ~~this act~~ P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to ~~low~~
34 ~~and moderate income~~ low- and moderate-income households for a
35 period of not less than ¹~~40~~ ²~~30~~ ¹40² years for ¹newly created¹
36 rental units ¹~~and~~ ¹ ²~~20~~ ²30² years for for-sale units ¹, ²~~except for~~
37 housing units for which affordability controls are extended for a new
38 term of affordability¹; provided that the agency² ~~may establish a~~
39 shorter period upon a determination that the economic feasibility of the
40 program is jeopardized by the requirement and the public purpose
41 served by the program outweighs the shorter period² ~~and 30 years for~~
42 housing units for which affordability controls are extended for a new
43 term of affordability, provided that the minimum extension term may
44 be limited to no less than 20 years as long as the original and extended
45 term, in combination, total at least 60 years. Any 100 percent
46 affordable rental property shall have a right to extinguish a deed
47 restriction regardless of original length, beginning 30 years following

1 the start of the deed restriction, provided a refinancing or
2 rehabilitation, or both, for the purpose of preservation is commenced
3 and that a new deed restriction of at least 30 years is provided. A
4 municipality shall be eligible to receive credits for all preserved units
5 pursuant to this subsection, as long as the original and extended term
6 total at least 60 years, and this credit may be obtained at the time of
7 preservation. All 100 percent affordable projects shall be eligible for
8 any affordable housing preservation program administered by the
9 State, beginning 30 years following the start of the deed restriction,
10 regardless of original length of the deed restriction. Any State
11 administered preservation program may allow a refinancing funding
12 process to commence prior to the 30th year of the deed restriction
13 when such refinancing or rehabilitation funding is needed to preserve
14 affordable housing. The agency² may update or amend any controls
15 previously adopted by the agency, in consultation with the Council on
16 Affordable Housing, prior to the effective date of P.L. , c. (C.)
17 (pending before the Legislature as this bill), provided that the
18 requirements and controls shall, at a minimum, be consistent with the
19 controls as in effect immediately prior to the effective date of P.L. ,
20 c. (C.) (pending before the Legislature as this bill), including,
21 but not limited to, any requirements concerning bedroom distributions,
22 affordability averages, and affirmative marketing. ²1For the purpose
23 of housing units for which affordability controls are extended for a
24 new term of affordability: (1) a 20-year minimum deed restriction shall
25 be required if the unit was initially created before October 1, 2001; and
26 (2) a 30-year minimum deed restriction shall be required if the unit
27 was initially created on or following October 1, 2001.1² The controls
28 may include, among others, requirements for recapture of assistance
29 provided pursuant to [this act] P.L.1985, c.222 (C.52:27D-301 et al.)
30 or restrictions on return on equity in the event of failure to meet the
31 requirements of the program. With respect to rental housing financed
32 by the agency pursuant to [this act] P.L.1985, c.222 (C.52:27D-301 et
33 al.) or otherwise which promotes the provision or maintenance of [low
34 and moderate income] low- and moderate-income housing, the agency
35 may waive restrictions on return on equity required pursuant to
36 P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale
37 of the property or of any interest in the property or sale of any interest
38 in the housing sponsor. The agency shall promulgate updated
39 regulations no later than nine months following the effective date of
40 P.L. , c. (C.) (pending before the Legislature as this bill). All
41 parties may continue to rely on regulations previously adopted by the
42 agency pursuant to the authority provided by this section as in effect
43 immediately prior to the effective date of P.L. , c. (C.)
44 (pending before the Legislature as this bill) until new rules and
45 regulations are adopted by the agency. Notwithstanding the provisions
46 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.) to the contrary, the agency, after consultation with department,

1 may adopt, immediately, upon filing with the Office of Administrative
2 Law, said regulations, which shall be effective for a period not to
3 exceed one year from the date of the filing. The agency shall
4 thereafter amend, adopt, or readopt the regulations in accordance with
5 the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

16 i. (1) The department shall promulgate processes and standards
17 for the certification of administrative agents and municipal housing
18 liaisons in the State, as well as standards for measuring performance of
19 and enforcing compliance by administrative agents and municipal
20 housing liaisons in implementing the affordable housing requirements
21 and controls established pursuant to subsection f. of this section.

22 (2) Administrative agents shall be responsible for implementing
23 the requirements and controls set by the regulations promulgated
24 pursuant to subsection ²**【(f)】** f.² of this section. The department may
25 bring via summary proceeding any findings of violation of the
26 responsibilities set forth in this section before a county level housing
27 judge, to docket the violation and issue corrective orders and levy
28 finis.

29 (3) Municipal housing liaisons shall be responsible for monitoring
30 administrative agents within their municipality's jurisdiction to ensure
31 compliance with the requirements and controls set by regulation under
32 subsection f. of this section.

33 (4) Municipal housing liaisons, the department, and interested
34 parties may bring a challenge before a county level housing judge to
35 determine whether properties subject to the regulations set forth by this
36 section are out of compliance with the regulations. A finding of
37 deliberate noncompliance may result in the department removing the
38 administrative agent's certification.

39 (5) A County level housing judge may issue fines and order
40 corrective actions for violations and may consider patterns of
41 violations in determining whether a municipality is meeting its
42 obligations under the compliance certification established by section 3
43 of P.L. , c. (C.) (pending before the Legislature as this bill).

44 (6) Notwithstanding the provisions of the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
46 the department may adopt, immediately, upon filing with the Office of
47 Administrative Law, regulations to implement the provisions of this
48 subsection, which shall be effective for a period not to exceed one year

1 from the date of the filing. The department shall thereafter amend,
2 adopt, or readopt the regulations in accordance with the requirements
3 of P.L.1968, c.410 (C.52:14B-1 et seq.).
4 (cf: P.L.2004, c.140, s.5)

5
6 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended
7 to read as follows:

8 19. Notwithstanding any rules of the New Jersey Housing and
9 Mortgage Finance Agency to the contrary, the allocation of **[low**
10 **income]** low-income tax credits shall be made by the agency to the
11 full extent such credits are permitted to be allocated under federal
12 law, including allocations of **[4]** four percent or **[9]** nine percent
13 federal **[low income]** low-income tax credits, and including
14 allocations allowable for partial credits. The affordable portion of
15 any mixed income or mixed use development that is part of a fair
16 share housing plan **[approved by the council, or]** that has obtained
17 compliance certification, including a court-approved judgment of
18 repose or compliance, including, but not limited to, a development
19 that has received a density bonus, shall be permitted to receive
20 allocations of **[low income]** low-income tax credits, provided that
21 the applicant can conclusively demonstrate that the market rate
22 residential or commercial units are unable to internally subsidize
23 the affordable units, and the affordable units are developed
24 contemporaneously with the commercial or market rate residential
25 units.

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

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

30 7. **[The council shall coordinate and review the housing**
31 **elements as filed pursuant to section 11 of P.L.1985, c.222**
32 **(C.52:27D-311), and the housing activities under section 20 of**
33 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to]**
34 Housing elements and fair share plans adopted pursuant to section 3
35 of P.L. , c. (C.) (pending before the Legislature as this bill)
36 shall ensure that at least 13 percent of the housing units made
37 available for occupancy by low-income and **[moderate income]**
38 moderate-income households to address a municipality's
39 prospective need obligation will be reserved for occupancy by very
40 low income households, as that term is defined pursuant to section 4
41 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units
42 made available for families with children. The 13 percent shall
43 count towards the minimum 50 percent of the housing units
44 required to be made available for occupancy by low-income
45 households to address a municipality's prospective need obligation.
46 Nothing in this section shall require that a specific percentage of the
47 units in any specific project be reserved as very **[low income]** low-

1 income housing; provided, however, that a municipality shall not
 2 receive bonus credits for the provision of housing units reserved for
 3 occupancy by very **[low income]** low-income households unless
 4 the 13 percent target has been exceeded within that municipality **[**.
 5 The council shall coordinate all efforts to meet the goal of this
 6 section in a manner that will result in a balanced number of housing
 7 units being reserved for very low income households throughout all
 8 housing regions. For the purposes of this section, housing activities
 9 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include
 10 any project-based assistance provided from the "New Jersey
 11 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140
 12 (C.52:27D-287.1 et al.), regardless of whether the housing activity
 13 is counted toward the municipal obligation under the "Fair Housing
 14 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**]** , and that the agency
 15 shall update the regulations adopted pursuant to section 21 of
 16 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for
 17 very low-income housing inconsistent with the percentages and
 18 definitions established pursuant to P.L. , c. (C.) (pending
 19 before the Legislature as this bill) with the percentage and
 20 definition specified in this section.

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

22

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

25 8. a. **[The council may authorize a]** (1) A municipality that is in
 26 the process of seeking compliance certification, has [petitioned for
 27 substantive] obtained compliance certification, ¹is a qualified urban
 28 aid municipality, as determined pursuant to paragraph (1) of
 29 subsection c. of section 7 of P.L. , c. (C.) (pending before the
 30 Legislature as this bill),¹ or that has been so authorized by a court of
 31 competent jurisdiction, and which has adopted a municipal
 32 development fee ordinance shall be authorized to impose and collect
 33 development fees from developers of residential property, in
 34 accordance with rules promulgated by the [council] department. Each
 35 amount collected shall be deposited and shall be accounted for
 36 separately, by payer and date of deposit.

37 (2) No later than ¹[90] 180¹ days following the enactment of
 38 P.L. , c. (C.) (pending before the Legislature as this bill), any
 39 municipality that is or has been authorized to impose and collect
 40 development fees from developers of residential property, or payments
 41 in lieu of constructing affordable housing, shall provide the
 42 Department of Community Affairs with a detailed accounting of all
 43 such fees that have been collected and expended since the inception of
 44 the municipal authorization to collect the fees.

45 (3) Beginning with the year after the enactment of P.L. ,
 46 c. (C.) (pending before the Legislature as this bill), by
 47 ²[January] February² 15, every municipality that is or has been

1 authorized to impose and collect development fees from developers of
2 residential property, or payments in lieu of constructing affordable
3 housing, shall provide the Department of Community Affairs with a
4 detailed accounting of all such fees that have been collected and
5 expended the previous year.

6 (4) A municipality may not spend or commit to spend any
7 affordable housing development fees, including Statewide non-
8 residential fees collected and deposited into the municipal affordable
9 housing trust fund, without first obtaining the **【council's】** approval of
10 the expenditure as part of its compliance certification or by the
11 department. A municipality shall include in its housing element and
12 fair share plan adopted pursuant to section 3 of P.L. , c. (C.)
13 (pending before the Legislature as this bill) a spending plan for current
14 funds in the municipal affordable housing trust fund and projected
15 funds through the current round. Review of that spending plan for
16 consistency with applicable law and the municipality's Housing
17 Element and Fair Share Plan shall be part of the process specified in
18 section 3 of P.L. , c. (C.) (pending before the Legislature as
19 this bill). The **【council】** department shall promulgate updated
20 regulations no later than nine months following the effective date of
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 regarding the establishment, administration, reporting, and
23 enforcement of the expenditure of affordable housing development
24 fees by municipalities, which shall include establishing an expedited
25 process for approving spending plan expenditures for emergent
26 opportunities to create affordable housing after a municipality has
27 obtained compliance certification and procedures for monitoring the
28 collection and expenditure of trust funds. The department shall
29 develop and publish on the department's Internet website a detailed
30 summary of the municipal affordable housing trust fund expenditures
31 for each municipality, and shall update each summary on an annual
32 basis. As part of the regulations adopted pursuant to this section and
33 section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall
34 adopt reporting requirements applicable to municipal affordable
35 housing trust funds to facilitate fulfillment of the department's
36 obligations pursuant to this section. Municipalities may continue to
37 rely on regulations on development fees and spending plans previously
38 adopted by the council until new rules and regulations are adopted by
39 the department. The **【council】** department shall have **【exclusive】**
40 jurisdiction regarding the enforcement of these regulations, provided
41 that any municipality which is not in compliance with the regulations
42 adopted by the **【council】** department may be subject to forfeiture of
43 any or all funds remaining within its municipal trust fund. Any funds
44 so forfeited shall be deposited into the "New Jersey Affordable
45 Housing Trust Fund" established pursuant to section 20 of P.L.1985,
46 c.222 (C.52:27D-320).

47 b. A municipality shall deposit all fees collected, whether or not
48 such collections were derived from fees imposed upon non-residential

1 or residential construction into a trust fund dedicated to those purposes
2 as required under this section, and such additional purposes as may be
3 approved by the **[council]** department.

4 c. (1) A municipality ², other than a qualified urban aid
5 municipality, as determined pursuant to paragraph (1) of subsection c.
6 of section 7 of P.L. , c. (C.) (pending before the Legislature as
7 this bill),² may only spend development fees for an activity approved
8 by the **[council]** department to address the municipal fair share
9 obligation, or approved as part of compliance certification.

10 (2) Municipal development trust funds shall not be expended
11 unless the municipality has immunity from ¹**[builder's remedy]**
12 exclusionary zoning¹ litigation at the time of the expenditure ²**[, and]** ,
13 or said municipality has previously collected such funds while under
14 the protection of presumptive validity or immunity from exclusionary
15 zoning litigation and in accordance with an approved spending plan.
16 However, municipal development trust funds may be expended by a
17 municipality if the municipality is a qualified urban aid municipality,
18 as determined pursuant to paragraph (1) of subsection c. of section 7 of
19 P.L. , c. (C.) (pending before the Legislature as this bill), with
20 a development fee ordinance and spending plan approved by the
21 department or a court of competent jurisdiction, regardless of whether
22 this approval occurs prior to or subsequent to the effective date of P.L.
23 , c. (C.) (pending before the Legislature as this bill). Municipal
24 development fee trust funds² shall not be expended:

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

27 (b) (i) on administrative costs, attorney fees or court costs to
28 obtain a judgment of repose; (ii) to contest a determination of the
29 municipality's fair share obligation; or (iii) on costs of any challenger
30 in connection to a challenge to the municipality's obligation, housing
31 element, or fair share plan.

32 (3) A municipality shall set aside a portion of its development fee
33 trust fund for the purpose of providing affordability assistance to **[low**
34 **and moderate income]** low- and moderate-income households in
35 affordable units included in a municipal fair share plan, in accordance
36 with rules of the **[council]** department.

37 (a) Affordability assistance programs may include down payment
38 assistance, security deposit assistance, low interest loans, common
39 maintenance expenses for units located in condominiums, rental
40 assistance, and any other program authorized by the **[council]**
41 department.

42 (b) Affordability assistance to households earning 30 percent or
43 less of median income may include buying down the cost of **[low**
44 **income]** low-income units in a municipal fair share plan to make them
45 affordable to households earning 30 percent or less of median income.
46 The use of development fees in this manner shall not entitle a

1 municipality to bonus credits except as may **【**be provided by the rules
2 of the council**】** otherwise be allowed by applicable precedent.

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

8 (5) Not more than 20 percent of the revenues collected from
9 development fees shall be expended on administration, in accordance
10 with rules of the **【council】** department. Such administration may
11 include expending a portion of its affordable housing trust fund on
12 actions and efforts reasonably related to the determination of its fair
13 share obligation and the development of its housing element and fair
14 share plan pursuant to paragraphs (1) and (2) of subsection f. of
15 section 3 of P.L. , c. (C.) (pending before the Legislature as
16 this bill), and for expenses that are reasonably necessary for
17 compliance with the processes of the program, including but not
18 limited to, the costs to the municipality of resolving a challenge under
19 the program.

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

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

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

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

43

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

46 10. a. The **【council】** department shall maintain on its Internet
47 website, and also publish on **【a regular】** an annual basis, an up-to-date

1 municipal status report **【**concerning the petitions for substantive
2 certification of each municipality that has submitted to the council's
3 jurisdiction, and shall collect and publish**】** based on its collection and
4 publication of information concerning the number affordable of
5 housing units actually constructed, construction starts, certificates of
6 occupancy granted, **【**rental units maintained, and the number of
7 housing units transferred or sold within the previous 12-month period**】**
8 the start and expiration dates of deed restrictions, and residential and
9 non-residential development fees collected and expended, including
10 purposes and amounts of such expenditures, along with the current
11 balance in the municipality's affordable housing trust funds. With
12 respect to units actually constructed, the information shall specify the
13 characteristics of the housing, including housing type, tenure,
14 affordability level, number of bedrooms, date and expiration of
15 affordability controls, and whether occupancy is reserved for families,
16 senior citizens, or other special populations. **【**No later than 60 months
17 after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the
18 council shall require each municipality, as a condition of substantive
19 certification, to provide, in a standardized electronic media format as
20 determined by the council, the details of the fair share plan as adopted
21 by the municipality and approved by the council. The council shall
22 publish and maintain such approved plans on its website.**】**

23 b. (1) No later than ¹**【90】** 180¹ days following the enactment of
24 P.L. , c. (C.) (pending before the Legislature as this bill), each
25 municipality shall provide the department with the information
26 necessary to comply with this section.

27 (2) Beginning with the year after the enactment of P.L. , c.
28 (C.) (pending before the Legislature as this bill), by ²**【January】**
29 February² 15, each municipality shall provide the department with the
30 information necessary to comply with this section.

31 c. The department may adopt, pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
33 regulations as may be necessary to effectuate the provisions of this
34 section, including rules and regulations to ensure that municipalities
35 and developers report any information as may be necessary for the
36 department to fulfill its obligations pursuant to this section.

37 (cf: P.L.2008, c.46, s.10)

38

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

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

1 Pinelands Commission pursuant to section 7 of the "Pinelands
2 Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth
3 Economic Revitalization Planning Authority pursuant to section 5
4 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands
5 Water Protection and Planning Council pursuant to section 11 of
6 P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards
7 formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77),
8 there shall be required to be reserved for occupancy by **low or**
9 **moderate income** low- or moderate-income households at least 20
10 percent of the residential units constructed **], to the extent this is**
11 **economically feasible** with affordability controls as required
12 pursuant to the rules and regulations of the agency.

13 b. Subject to the provisions of subsection d. of this section, a
14 developer of a project consisting of newly-constructed residential
15 units being financed in whole or in part with State funds, including,
16 but not limited to, transit villages designated by the Department of
17 Transportation and units constructed on State-owned property, shall
18 be required to reserve at least 20 percent of the residential units
19 constructed for occupancy by **low or moderate income** low- or
20 moderate-income households, as those terms are defined in section
21 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as
22 required under the rules of the **council, unless the municipality in**
23 **which the property is located has received substantive certification**
24 **from the council and such a reservation is not required under the**
25 **approved affordable housing plan, or the municipality has been**
26 **given a judgment of repose or a judgment of compliance by the**
27 **court, and such a reservation is not required under the approved**
28 **affordable housing plan** agency.

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

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

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

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

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

26 d. Notwithstanding the provisions of subsection b. of this
27 section, or any other law or regulation to the contrary, for purposes
28 of mixed use projects or qualified residential projects in which a
29 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-
30 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90
31 (C.34:1B-209.3), or both, an "eligible municipality," as defined in
32 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of
33 deciding the percentage of newly-constructed residential units
34 within the project, up to 20 percent of the total, required to be
35 reserved for occupancy by **】** low- or
36 moderate-income households. For a mixed use project or a
37 qualified residential project that has received preliminary or final
38 site plan approval prior to the effective date of P.L.2011, c.89, the
39 percentage shall be deemed to be the percentage, if any, of units
40 required to be reserved for **】** low- or
41 moderate-income households in accordance with the terms and
42 conditions of such approval.

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

44

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

47 3. As used in this act:

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

4 "Agency" means the New Jersey Housing and Mortgage Finance
5 Agency.

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

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

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

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

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

20 "Housing region" means a housing region as defined in
21 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,
22 c.222 (C.52:27D-304) and determined **【**by the Council on
23 Affordable Housing pursuant to section 7 of that act, P.L.1985,
24 c.222 (C.52:27D-307)**】** pursuant to subsection b. of section 6 of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

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

32 "Low income" means a gross annual household income equal to
33 50% or less of the median gross annual household income for
34 households of the same size within the relevant housing region.

35 "Moderate income" means a gross annual household income
36 equal to not more than 80%, but more than 50% of the median gross
37 annual household income for households of the same size within the
38 relevant housing region.

39 "Program" means the Affordable Home Ownership Opportunities
40 Program created by this act.

41 "Qualified nonprofit organization" means any corporation or
42 association of persons organized under Title 15A of the New Jersey
43 Statutes, having for its principal purpose, or as a purpose ancillary
44 to its principal purpose, the improvement of realistic opportunities
45 for low income and moderate income housing, as defined pursuant
46 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),
47 being within the description of section 501(c)(3) of the United
48 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been

1 determined by the agency to be a bona fide organization not under
2 the effective control of any for-profit organization or governmental
3 entity, and appearing capable, by virtue of past activities,
4 qualifications of staff or board, or other features, of furthering the
5 purposes of this act.

6 "Substantial rehabilitation" means repair, reconstruction or
7 renovation which (1) costs in excess of 60% of the fair market value
8 of a rehabilitated dwelling after such repair, reconstruction or
9 renovation, or (2) renders a previously vacant and uninhabitable
10 dwelling safe, sanitary and decent for residential purposes, or (3)
11 converts to safe, sanitary and decent residential use a structure
12 previously in non-residential use.

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

14

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

17 7. A project of new construction or substantial rehabilitation by
18 a nonprofit organization shall be eligible for a loan under this act if
19 (1) the homes to be constructed or substantially rehabilitated under
20 the project are located within an identifiable neighborhood in which
21 median family income does not exceed the current standard of
22 "moderate income" pursuant to the contemporaneous standards [of
23 the Council on Affordable Housing] established pursuant to the
24 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the
25 homes to be constructed or substantially rehabilitated under the
26 project are sufficient in number and located on the same or
27 contiguous parcels of land or within such proximity to each other as
28 to render the cost per unit of housing practicable for acquisition by
29 lower-income purchasers; and (3) each home constructed or
30 substantially rehabilitated within the project will conform to all
31 requirements of the State Uniform Construction Code, except as to
32 the waiver of any fee or other requirement pursuant to subsection b.
33 of section 9 of this act.

34 (cf: P.L.1995, c.343, s.7)

35

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

38 3. As used in this act:

39 "Agency" means the New Jersey Housing and Mortgage Finance
40 Agency.

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

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

47 "Eligible project" means a project undertaken by a qualified
48 housing sponsor to create housing for shared occupancy by seniors

1 or persons with disability of low or moderate income, whether for
2 home ownership or rental, which meets the standards of eligibility
3 for loans under the program created by section 4 of P.L.1998, c.128
4 (C.55:14K-75).

5 "Eligible purchaser" means a purchaser of a dwelling unit in an
6 eligible project who fulfills the definition of a senior or person with
7 disability pursuant to this section, is of low or moderate income and
8 to whom a loan may be made under the program pursuant to section
9 4 of P.L.1998, c.128 (C.55:14K-75).

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

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

19 "Low income" means a gross annual household income equal to
20 50% or less of the median gross annual household income for
21 households of the same size within the relevant housing region.

22 "Moderate income" means a gross annual household income
23 equal to not more than 80%, but more than 50% of the median gross
24 annual household income for households of the same size within the
25 relevant housing region.

26 "Person with disability" means any person who is 18 years of age
27 or older and who fulfills the definition of having a "disability"
28 pursuant to section 3 of the "Americans with Disabilities Act of
29 1990," 42 U.S.C. s.12102).

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

33 "Qualified housing sponsor" means any corporation or
34 association of persons organized under the New Jersey Statutes, or
35 any other corporation having for one of its purposes the
36 improvement of realistic opportunities for low income and moderate
37 income housing, as defined pursuant to the "Fair Housing Act,"
38 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by
39 virtue of past activities, qualifications of staff or board, or other
40 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-
41 72 et seq.).

42 "Retrofitting" means renovating or remodeling an existing
43 residential or non-residential structure to allow for cooperative
44 living.

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

46 "Substantial rehabilitation" means repair, reconstruction or
47 renovation which (1) costs in excess of 60% of the fair market value
48 of a rehabilitated dwelling after such repair, reconstruction or

1 renovation, or (2) renders a previously vacant and uninhabitable
2 dwelling safe, sanitary and decent for residential purposes or (3)
3 converts to safe, sanitary and decent residential use a structure
4 previously in non-residential use.
5 (cf: P.L.1998, c.128, s.3)

6
7 36. (New section) a. (1) Notwithstanding the provisions of the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
9 to the contrary, the Commissioner of Community Affairs shall, in
10 consultation with the Administrative Director of the Courts and the
11 Executive Director of the New Jersey Housing and Mortgage Finance
12 Agency, adopt, immediately upon filing with the Office of
13 Administrative Law, no later than nine months after the effective date
14 of P.L. , c. (C.) (pending before the Legislature as this bill),
15 such transitional rules and regulations as necessary for the
16 implementation of P.L. , c. (C.) (pending before the
17 Legislature as this bill), including for ²: (a)² the identification of any
18 vestigial duties of the Council on Affordable Housing and ²["for"]² the
19 transfer of those duties within the Department of Community Affairs
20 to the extent that those duties are not otherwise assumed, pursuant to
21 P.L. , c. (C.) (pending before the Legislature as this bill), by
22 municipalities or the Affordable Housing Dispute Resolution Program
23 ²; and (b) the establishment of policies regarding the cost of the
24 assessments and fees of planned real estate developments, as defined
25 in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-
26 income housing units².

27 (2) The department, in consultation with the agency, shall
28 thereafter amend, adopt, or readopt the regulations in accordance with
29 the requirements of the "Administrative Procedure Act," P.L.1968,
30 c.410 (C.52:14B-1 et seq.).

31 b. The Executive Director of the New Jersey Housing and
32 Mortgage Finance Agency ², in consultation with the department,²
33 shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
34 c.410 (C.52:14B-1 et seq.), no later than nine months after the
35 effective date of P.L. , c. (C.) (pending before the Legislature
36 as this bill), rules and regulations to update the Uniform Housing
37 Affordability Controls as required pursuant to the "Fair Housing Act,"
38 P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the
39 Uniform Housing Affordability Controls, the agency shall set rules
40 establishing that, for the purpose of ¹newly created¹ low- and
41 moderate-income rental units, a ¹["40-year"] ²["30-year"] ¹ 40-year²
42 minimum deed restriction shall be required. For the purpose of for-
43 sale units, a ²["20-year"] ² 30-year² minimum deed restriction shall be
44 required. ¹For the purpose of housing units for which affordability
45 controls are extended for a new term of affordability ²[": (1) a 20-year
46 minimum deed restriction shall be required if the unit was initially
47 created before October 1, 2001; and (2) a 30-year minimum deed

1 restriction shall be required if the unit was initially created on or
 2 following October 1, 2001】 , a 30-year minimum deed restriction shall
 3 be required, provided that the minimum extension term may be limited
 4 to no less than 20 years as long as the original and extended term, in
 5 combination, total at least 60 years. Any 100 percent affordable rental
 6 property shall have a right to extinguish a deed restriction regardless of
 7 original length, beginning 30 years following the start of the deed
 8 restriction, provided a refinancing or rehabilitation, or both, for the
 9 purpose of preservation is commenced and that a new deed restriction
 10 of at least 30 years is provided. A municipality shall be eligible to
 11 receive credits for all preserved units pursuant to this subsection, as
 12 long as the original and extended term total at least 60 years, and this
 13 credit may be obtained at the time of preservation. All 100 percent
 14 affordable projects shall be eligible for any affordable housing
 15 preservation program administered by the State, beginning 30 years
 16 following the start of the deed restriction, regardless of original length
 17 of the deed restriction. Any State administered preservation program
 18 may allow a refinancing funding process to commence prior to the
 19 30th year of the deed restriction when such refinancing or
 20 rehabilitation funding is needed to preserve affordable housing^{2 1}

21
 22 37. The following sections are repealed:

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

46
 47 38. a. There is appropriated to the Affordable Housing Dispute
 48 Resolution Program, established pursuant to subsection a. of section

1 5 of P.L. , c. (C.) (pending before the Legislature as this
2 bill), from the General Fund \$12,000,000 for the purposes of
3 carrying out its responsibilities for the fourth round of affordable
4 housing obligations, as established pursuant to section 5 of
5 P.L. , c. (C.) (pending before the Legislature as this bill).

6 b. There is appropriated to the Department of Community
7 Affairs, from the General Fund, \$4,000,000 for the purposes of
8 carrying out responsibilities allocated to it pursuant to P.L. , c.
9 (C.) (pending before the Legislature as this bill).

10

11 39. This act shall take effect immediately, and shall apply to
12 each new round of affordable housing obligations that begins
13 following enactment.