

ASSEMBLY, No. 3337

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/29/2024)

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

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

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

Matter underlined thus is new matter.

1 Of those monies deposited into the "New Jersey Affordable
2 Housing Trust Fund" that are derived from municipal development fee
3 trust funds, or from available collections of Statewide non-residential
4 development fees, a priority for funding shall be established for
5 projects in municipalities that have petitioned the council for
6 substantive certification.

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

10 b. (1) The commissioner shall establish rules and regulations
11 governing the qualifications of applicants, the application procedures,
12 and the criteria for awarding grants and loans and the standards for
13 establishing the amount, terms, and conditions of each grant or loan.

14 (2) The governing body of a municipality in which a housing
15 project or program is located, and which is awarded a grant or loan
16 from the fund for a housing project or program, may provide, by
17 ordinance or resolution as appropriate, that the units of affordable
18 housing being developed pursuant to a housing project or program
19 being funded, in whole or in part, through the "New Jersey Affordable
20 Housing Trust Fund" shall be exempt from real property taxation if the
21 housing sponsor enters into an agreement with the municipality for
22 payments to the municipality in lieu of taxes for municipal services.
23 Any such agreement may require the housing sponsor to pay to the
24 municipality an amount up to 20 percent of the annual gross revenue
25 from each housing project situated on such real property for each year
26 of operation of the agreement following the substantial completion of
27 the housing project. For the purpose of this subsection, "annual gross
28 revenue" means the total annual gross rental or carrying charge and
29 other income of a housing sponsor from a housing project. If an
30 agreement is entered into from the date of recording the mortgage on
31 the housing project to the date of substantial completion of the housing
32 project, the annual amount payable to the municipality as taxes or as
33 payments in lieu of taxes in respect of the project site shall not be in
34 excess of the amount of taxes on the project site for the year preceding
35 the recording of the mortgage. An agreement between a housing
36 sponsor and a municipality entered into pursuant to this subsection
37 shall be submitted to the commissioner for review in order to avoid
38 duplicating, overlapping or inconsistent regulations or provisions. An
39 exemption from taxation provided pursuant to this subsection shall not
40 extend beyond the date on which an eligible loan made for the project
41 is paid in full.

42 (3) Notwithstanding the provisions of any law or regulation in the
43 contrary, the governing body of a municipality may agree to continue a
44 tax exemption for a State, federally, or municipally subsidized housing
45 project beyond the date on which an eligible loan made for the project
46 is fully paid, or beyond the date upon which a tax exemption expires,
47 if the project remains subject to affordability controls pursuant to:

1 (a) project-based federal rental assistance, authorized pursuant to
2 section 8 of the United States Housing Act of 1937 (42 U.S.C.
3 s.1437f), or other federal or State project-based assistance;

4 (b) the Uniform Housing Affordability Controls promulgated by
5 the New Jersey Housing and Mortgage Finance Agency; or

6 (c) the rent and income limits established by the federal Low
7 Income Housing Tax Credit program pursuant to section 42 of the
8 Internal Revenue Code (26 U.S.C. s.42).

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

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

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

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

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

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

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

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

45 (7) Other housing programs for low and moderate income housing,
46 including, without limitation, (a) infrastructure projects directly
47 facilitating the construction of low and moderate income housing not
48 to exceed a reasonable percentage of the construction costs of the low

1 and moderate income housing to be provided and (b) alteration of
2 dwelling units occupied or to be occupied by households of low or
3 moderate income and the common areas of the premises in which they
4 are located in order to make them accessible to persons with
5 disabilities.

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

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

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

42 h. The department and the State Treasurer shall submit the "New
43 Jersey Affordable Housing Trust Fund" for an audit annually by the
44 State Auditor or State Comptroller, at the discretion of the Treasurer.
45 In addition, the department shall prepare an annual report for each
46 fiscal year, and submit it by November 30th of each year to the
47 Governor and the Legislature, and the Joint Committee on Housing
48 Affordability, or its successor, and post the information to its web site,

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

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

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

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

18 8. a. (1) The council may authorize a municipality that has
19 petitioned for substantive certification, or that has been so
20 authorized by a court of competent jurisdiction, and which has
21 adopted a municipal development fee ordinance to impose and
22 collect development fees from developers of residential property, in
23 accordance with rules promulgated by the council. Each amount
24 collected shall be deposited and shall be accounted for separately,
25 by payer and date of deposit.

26 (2) A municipality may not spend or commit to spend any
27 affordable housing development fees, including Statewide non-
28 residential fees collected and deposited into the municipal
29 affordable housing trust fund, without first obtaining the council's
30 approval of the expenditure. The council shall promulgate
31 regulations regarding the establishment, administration and
32 enforcement of the expenditure of affordable housing development
33 fees by municipalities. The council shall have exclusive
34 jurisdiction regarding the enforcement of these regulations,
35 provided that any municipality which is not in compliance with the
36 regulations adopted by the council may be subject to forfeiture of
37 any or all funds remaining within its municipal trust fund. Any
38 funds so forfeited shall be deposited into the "New Jersey
39 Affordable Housing Trust Fund" established pursuant to section 20
40 of P.L.1985, c.222 (C.52:27D-320).

41 (3) The governing body of a municipality which is spending or
42 committing to spend affordable housing development fees may
43 provide, by ordinance or resolution as appropriate, that the units of
44 affordable housing being developed pursuant to a housing project or
45 program being funded, in whole or in part, through affordable
46 housing development fees shall be exempt from real property
47 taxation if the housing sponsor enters into an agreement with the
48 municipality for payments to the municipality in lieu of taxes for

1 municipal services. Any such agreement may require the housing
2 sponsor to pay to the municipality an amount up to 20 percent of the
3 annual gross revenue from each housing project situated on such
4 real property for each year of operation of the agreement following
5 the substantial completion of the housing project. For the purpose
6 of this subsection, "annual gross revenue" means the total annual
7 gross rental or carrying charge and other income of a housing
8 sponsor from a housing project. If an agreement is entered into
9 from the date of recording the mortgage on the housing project to
10 the date of substantial completion of the housing project, the annual
11 amount payable to the municipality as taxes or as payments in lieu
12 of taxes in respect of the project site shall not be in excess of the
13 amount of taxes on the project site for the year preceding the
14 recording of the mortgage. An agreement between a housing
15 sponsor and a municipality entered into in accordance with this
16 subsection shall be submitted to the commissioner for review in
17 order to avoid duplicating, overlapping or inconsistent regulations
18 or provisions. An exemption from taxation provided in accordance
19 with this subsection shall not extend beyond the date on which an
20 eligible loan made for the project is paid in full.

21 (4) Notwithstanding the provisions of any law or regulation in
22 the contrary, the governing body of a municipality may agree to
23 continue a tax exemption for a State, federally, or municipally
24 subsidized housing project beyond the date on which an eligible
25 loan made for the project is fully paid, or beyond the date upon
26 which a tax exemption expires, if the project remains subject to
27 affordability controls pursuant to:

28 (a) project-based federal rental assistance, authorized pursuant
29 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
30 s.1437f), or other federal or State project-based assistance;

31 (b) the Uniform Housing Affordability Controls promulgated by
32 the New Jersey Housing and Mortgage Finance Agency; or

33 (c) the rent and income limits established by the federal Low
34 Income Housing Tax Credit program pursuant to section 42 of the
35 Internal Revenue Code (26 U.S.C. s.42).

36 b. A municipality shall deposit all fees collected, whether or
37 not such collections were derived from fees imposed upon non-
38 residential or residential construction into a trust fund dedicated to
39 those purposes as required under this section, and such additional
40 purposes as may be approved by the council.

41 c. (1) A municipality may only spend development fees for an
42 activity approved by the council to address the municipal fair share
43 obligation.

44 (2) Municipal development trust funds shall not be expended to
45 reimburse municipalities for activities which occurred prior to the
46 authorization of a municipality to collect development fees.

47 (3) A municipality shall set aside a portion of its development
48 fee trust fund for the purpose of providing affordability assistance

1 to low and moderate income households in affordable units
2 included in a municipal fair share plan, in accordance with rules of
3 the council.

4 (a) Affordability assistance programs may include down
5 payment assistance, security deposit assistance, low interest loans,
6 common maintenance expenses for units located in condominiums,
7 rental assistance, and any other program authorized by the council.

8 (b) Affordability assistance to households earning 30 percent or
9 less of median income may include buying down the cost of low
10 income units in a municipal fair share plan to make them affordable
11 to households earning 30 percent or less of median income. The use
12 of development fees in this manner shall not entitle a municipality
13 to bonus credits except as may be provided by the rules of the
14 council.

15 (4) A municipality may contract with a private or public entity
16 to administer any part of its housing element and fair share plan,
17 including the requirement for affordability assistance, or any
18 program or activity for which the municipality expends
19 development fee proceeds, in accordance with rules of the council.

20 (5) Not more than 20 percent of the revenues collected from
21 development fees shall be expended on administration, in
22 accordance with rules of the council.

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

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

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

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

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47 3. This act shall take effect immediately.

STATEMENT

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This bill would amend the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," or a municipal development fee trust fund, to fund a housing project or program, to provide that the project is exempt from real property taxation and to allow the municipality and the housing sponsor to instead negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal services. The bill would also authorize the governing body of a municipality to provide that a housing project or program is exempt from real property taxation and to allow the municipality and the housing sponsor to instead negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal services if the housing project or program is funded through municipal affordable housing development fees, or the "New Jersey Affordable Housing Trust Fund."

The bill provides that any such agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill would provide that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.