

CHAPTER 6

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

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

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

C.52:27D-320 "New Jersey Affordable Housing Trust Fund."

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

a. (1) Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements obtained compliance certification pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

(2) Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide non-residential development fees, a priority for funding shall be established for projects in municipalities that have received compliance certification.

(3) Programs and projects in any municipality shall be funded only after receipt by the commissioner of either:

(a) a written statement in support of the program or project from the municipal governing body; or

(b) a written statement in support of the program or project from the municipal clerk, if the municipality has enacted an ordinance pursuant to section 1 of P.L.2024, c.5 (C.52:27D-304.1a).

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

(2) The governing body of a municipality in which a housing project or program is located, and which is awarded a grant or loan from the fund for a housing project or program, may

provide, by ordinance , that the units of affordable housing being developed or preserved pursuant to a housing project or program being funded, in whole or in part, through the "New Jersey Affordable Housing Trust Fund" shall be exempt from real property taxation if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services. 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 situated on such real property for each year of operation of the agreement following the substantial completion of the housing project. Any such agreement shall require the housing sponsor to pay the municipality an amount not less than the greater of four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the property comprising the project site for the year preceding the recording of the mortgage, if applicable. In the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor shall be required to pay to the municipality shall be four percent of the annual gross revenue. For the purpose of this subsection, "annual gross revenue" means the total annual gross rental or carrying charge and other income of a housing sponsor from a housing project. If an agreement is entered into from the date of recording the mortgage on the housing project to the date of substantial completion of the housing project, the annual amount payable to the municipality as taxes or as payments in lieu of taxes in respect of the project site shall not be in excess of the amount of taxes on the project site for the year preceding the recording of the mortgage. Within 30 calendar days following: the effective date of an ordinance adopted by a municipal governing body approving a tax exemption under this subsection, or the execution of a financial agreement between a housing sponsor and a municipality entered into pursuant to this subsection, whichever is later, the municipal clerk shall electronically transmit a certified copy of the ordinance and the agreement to the Director of the Division of Local Government Services in such a manner as may be specified by the director. An exemption from taxation provided pursuant to this subsection shall not extend beyond the date on which an eligible loan made for the project is paid in full.

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

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

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

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

c. For any period which the commissioner may approve, the commissioner may assist affordable housing programs that are located in municipalities that have a pending request for compliance certification, provided that the affordable housing program will meet all or part of a municipal low- and moderate-income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low- and moderate-income housing need as determined pursuant to the low- and moderate-income household growth over

the prior 10 years, as calculated pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

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

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

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

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

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

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

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

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

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

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

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

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

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

C.52:27D-329.2 Authorization of municipality to impose, collect development fees.

8. a. (1) A municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) (pending before the Legislature as this bill) a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. Review of that spending plan for consistency with applicable law and the municipality's housing element and fair share plan shall be part of the process specified in section 3 of P.L.2024, c.2 (C.52:27D-304.1). The department shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) regarding the establishment, administration, reporting, and enforcement of the expenditure of affordable housing development fees by municipalities, which shall include establishing an expedited process for approving spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification and procedures for monitoring the collection and expenditure of trust funds. The department shall develop and publish on the department's Internet website a detailed summary of the municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. As part of the regulations adopted pursuant to this section and section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt reporting requirements applicable to municipal affordable housing trust funds to facilitate fulfillment of the department's obligations pursuant to this section. Municipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department. The department shall have jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the department may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

(5) The governing body of a municipality which is spending or committing to spend affordable housing development fees may provide, by ordinance, that the units of affordable housing being developed or preserved pursuant to a housing project or program being funded, in whole or in part, through affordable housing development fees shall be exempt from real property taxation if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services. 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 situated on such real property for each year of operation of the agreement following the substantial completion of the housing project. Any such agreement shall require the housing sponsor to pay the municipality an amount not less than the greater of four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the property comprising the project site for the year preceding the recording of the mortgage, if applicable. In the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor shall be required to pay to the municipality shall be four percent of the annual gross revenue. For the purpose of this subsection, "annual gross revenue" means the total annual gross rental or carrying charge and other income of a housing sponsor from a housing project. If an agreement is entered into from the date of recording the mortgage on the housing project to the date of substantial completion of the housing project, the annual

amount payable to the municipality as taxes or as payments in lieu of taxes in respect of the project site shall not be in excess of the amount of taxes on the project site for the year preceding the recording of the mortgage. Within 30 calendar days following: the effective date of an ordinance adopted by a municipal governing body approving a tax exemption under this subsection, or the execution of a financial agreement between a housing sponsor and a municipality entered into pursuant to this subsection, whichever is later, the municipal clerk shall electronically transmit a certified copy of the ordinance and the agreement to the Director of the Division of Local Government Services in such a manner as may be specified by the director. An exemption from taxation provided in accordance with this subsection shall not extend beyond the date on which an eligible loan made for the project is paid in full.

(6) Notwithstanding the provisions of any law or regulation to the contrary, the governing body of a municipality may agree to continue or grant a new tax exemption for a State, federally, or municipally subsidized housing project beyond the date on which an eligible loan made for the project is fully paid, or beyond the date upon which a tax exemption expires, for any period the project remains subject to affordability controls pursuant to:

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

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

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

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

c. (1) A municipality, other than a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3) may only spend development fees for an activity approved by the department to address the municipal fair share obligation or approved as part of compliance certification.

(2) Municipal development trust funds shall not be expended unless the municipality has immunity from exclusionary zoning litigation at the time of the expenditure or said municipality has previously collected such funds while under the protection of presumptive validity or immunity from exclusionary zoning litigation and in accordance with an approved spending plan. However, municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction, regardless of whether this approval occurs prior to or subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). Municipal development fee trust funds shall not be expended:

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

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

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

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

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

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

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program..

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

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

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

3. This act shall take effect immediately.

Approved March 20, 2024.