

SENATE, No. 50

STATE OF NEW JERSEY 221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator NICHOLAS P. SCUTARI

District 22 (Somerset and Union)

Co-Sponsored by:

Senators Beach and Burgess

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2024)

S50 SINGLETON, SCUTARI

2

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

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

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

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

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

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

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

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

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

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

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

46 k. The Legislature finds that the role of the Council on
47 Affordable Housing, as intended in the original enactment of the

1 "Fair Housing Act," has not developed in practice as was intended
2 in the legislation.

3 l. The council's inability to function ultimately led the Supreme
4 Court in 2015 to order the temporary dissolution of the requirement
5 that administrative remedies be exhausted prior to resolving
6 affordable housing disputes before the court, and allowed the courts
7 to resume their role as the forum of first resort for evaluating
8 municipal compliance with Mount Laurel obligations pursuant to
9 guidelines laid out by the Supreme Court's order.

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

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

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

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

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

- 1 2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
2 read as follows:
- 3 4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):
- 4 a. "Council" means the Council on Affordable Housing
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall
6 have primary jurisdiction for the administration of housing
7 obligations in accordance with sound regional planning
8 considerations in this State**】** abolished pursuant to section 3 of
9 P.L. , c. (C.) (pending before the Legislature as this bill).
- 10 b. "Housing region" means a geographic area **【**of not less than
11 two nor more than four contiguous, whole counties which exhibit
12 significant social, economic and income similarities, and which
13 constitute to the greatest extent practicable the primary metropolitan
14 statistical areas as last defined by the United States Census Bureau
15 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**
16 established pursuant to subsection b. of section 6
17 of P.L. , c. (C.) (pending before the Legislature as this
18 bill).
- 19 c. **【**"Low income" "Low-income housing" means housing
20 affordable according to federal Department of Housing and Urban
21 Development or other recognized standards for home ownership
22 and rental costs and occupied or reserved for occupancy by
23 households with a gross household income equal to 50 percent or
24 less of the median gross household income for households of the
25 same size within the housing region in which the housing is located.
- 26 d. **【**"Moderate income" "Moderate-income housing" means
27 housing affordable according to federal Department of Housing and
28 Urban Development or other recognized standards for home
29 ownership and rental costs and occupied or reserved for occupancy
30 by households with a gross household income equal to more than 50
31 **【**%**】** percent but less than 80 percent of the median gross household
32 income for households of the same size within the housing region in
33 which the housing is located.
- 34 e. **【**"Resolution of participation" means a resolution adopted by
35 a municipality in which the municipality chooses to prepare a fair
36 share plan and housing element in accordance with P.L.1985, c.222
37 (C.52:27D-301 et al.)**】** (Deleted by amendment, P.L. , c.)
38 (pending before the Legislature as this bill)
- 39 f. "Inclusionary development" means a residential housing
40 development in which a substantial percentage of the housing units
41 are provided for a reasonable income range of **【**low and moderate
42 income**】** low- and moderate-income households.
- 43 g. "Conversion" means the conversion of existing commercial,
44 industrial, or residential structures for **【**low and moderate income**】**
45 low- and moderate-income housing purposes where a substantial
46 percentage of the housing units are provided for a reasonable

- 1 income range of **low and moderate income** low- and moderate-
2 income households.
- 3 h. "Development" means any development for which
4 permission may be required pursuant to the "Municipal Land Use
5 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 6 i. "Agency" means the New Jersey Housing and Mortgage
7 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
8 seq.).
- 9 j. "Prospective need" means a projection of housing needs
10 based on development and growth which is reasonably likely to
11 occur in a region or a municipality, as the case may be, as a result
12 of actual determination of public and private entities. **[In**
13 **determining prospective need, consideration shall be given to**
14 **approvals of development applications, real property transfers, and**
15 **economic projections prepared by the State Planning Commission**
16 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**
17 **196 et seq.)]** Prospective need shall be determined by the
18 methodology set forth pursuant to sections 6 and 7 of P.L. , c.
19 (C. and C.) (pending before the Legislature as this bill)
20 for the fourth round and all future rounds of housing obligations.
- 21 k. "Person with a disability" means a person with a physical
22 disability, infirmity, malformation, or disfigurement which is
23 caused by bodily injury, birth defect, aging, or illness including
24 epilepsy and other seizure disorders, and which shall include, but
25 not be limited to, any degree of paralysis, amputation, lack of
26 physical coordination, blindness or visual impairment, deafness or
27 hearing impairment, the inability to speak or a speech impairment,
28 or physical reliance on a service animal, wheelchair, or other
29 remedial appliance or device.
- 30 l. "Adaptable" means constructed in compliance with the
31 technical design standards of the barrier free subcode adopted by
32 the Commissioner of Community Affairs pursuant to the "State
33 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
34 et seq.) and in accordance with the provisions of section 5 of
35 P.L.2005, c.350 (C.52:27D-123.15).
- 36 m. "Very **low income** low-income housing" means housing
37 affordable according to federal Department of Housing and Urban
38 Development or other recognized standards for home ownership
39 and rental costs and occupied or reserved for occupancy by
40 households with a gross household income equal to 30 percent or
41 less of the median gross household income for households of the
42 same size within the housing region in which the housing is located.
- 43 n. "Accessory dwelling unit" means a residential dwelling unit
44 that provides complete independent living facilities with a private
45 entrance for one or more persons, consisting of provisions for
46 living, sleeping, eating, sanitation, and cooking, including a stove
47 and refrigerator, and is located within a proposed or existing
48 primary dwelling, within an existing or proposed structure that is

1 accessory to a dwelling on the same lot, constructed in whole or
2 part as an extension to a proposed or existing primary dwelling, or
3 constructed as a separate detached structure on the same lot as the
4 existing or proposed primary dwelling.

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

12 p. "Commissioner" means the Commissioner of Community
13 Affairs.

14 q. "Compliance certification" means the certification obtained
15 by a municipality pursuant to section 3 of P.L. , c. (C.)
16 (pending before the Legislature as this bill), that protects the
17 municipality from a builder's remedy during the current round of
18 present and prospective need and through July 1 of the year the next
19 round begins, which is also known as a "judgment of compliance"
20 or "judgment of repose." The term "compliance certification" shall
21 include a judgment of repose granted in an action filed pursuant to
22 section 13 of P.L.1985, c.222 (C.52:27D-313).

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

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

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

33 u. "Fair share plan" means the plan or proposal that is in a form
34 which may readily be adopted, with accompanying ordinances and
35 resolutions, pursuant to subsection f. of section 3 of
36 P.L. , c. (C.) (pending before the Legislature as this bill),
37 by which a municipality proposes to satisfy its obligation to create a
38 realistic opportunity to meet its fair share of low- and moderate-
39 income housing needs of its region and which details the
40 affirmative measures the municipality proposes to undertake to
41 achieve its fair share of low- and moderate-income housing, as
42 provided in the municipal housing element, and addresses the
43 development regulations necessary to implement the housing
44 element, including, but not limited to, inclusionary requirements
45 and development fees, and the elimination of unnecessary housing
46 cost-generating features from the municipal land use ordinances and
47 regulations.

1 v. "Housing element" means that portion of a municipality's
2 master plan consisting of reports, statements, proposals, maps,
3 diagrams, and text designed to meet the municipality's fair share of
4 its region's present and prospective housing needs, particularly with
5 regard to low- and moderate-income housing, and which shall
6 contain the municipal present and prospective obligation for
7 affordable housing, determined pursuant to subsection f. of section
8 3 of P.L. , c. (C.) (pending before the Legislature as this
9 bill).

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

13 x. "Transitional housing" means temporary housing that:

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

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

19 (3) is licensed by the department; and

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

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

22
23 3. (New section) a. The Council on Affordable Housing,
24 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
25 301 et al.), is abolished. Each municipality shall determine its
26 municipal present and prospective obligations in accordance with
27 the formulas established in sections 6 and 7 of P.L. , c. (C.
28 and C.) (pending before the Legislature as this bill) and may
29 take into consideration the calculations in the report published by
30 the department in accordance with this section.

31 b. Following the expiration of the third round of affordable
32 housing obligations on July 1, 2025, a municipality shall have
33 immunity from a builder's remedy if the municipality complies with
34 the deadlines established in P.L. , c. (C.) (pending before
35 the Legislature as this bill) for both determining present and
36 prospective obligations, and for adopting a housing element and fair
37 share plan to meet those obligations.

38 c. Prior to the beginning of each new 10-year round of housing
39 obligations beginning with the fourth round on July 1, 2025, the
40 Department of Community Affairs shall conduct a calculation of
41 regional need and municipal present and prospective obligations in
42 accordance with the formulas established in sections 6 and 7 of
43 P.L. , c. (C. and C.) (pending before the Legislature as
44 this bill).

45 d. For the fourth round of affordable housing obligations, the
46 department shall prepare and submit a report to the Governor, and,
47 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
48 Legislature providing a report on the calculations of regional need

1 and municipal obligations for each region of the State on or before
2 August 1, 2024. The department shall provide the report to each
3 municipality in the State at the same time that it submits the report
4 to the Governor and Legislature and shall also publish such report
5 on the department's Internet website. For the fifth round, and each
6 subsequent new round of housing obligations, the department shall
7 prepare and submit a report to each municipality in the State, the
8 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
9 19.1), to the Legislature on these calculations on or before August 1
10 of the year prior to the start of the new round and shall also publish
11 such report on the department's Internet website. For each 10-year
12 round of housing obligations, a municipality may take into
13 consideration the calculations in the report prepared by the
14 department pursuant to this subsection in determining its present
15 and prospective obligations.

16 e. Nothing in the provisions of subsections c., d., or f. of this
17 section shall be interpreted to render any calculation in a report by
18 the department published pursuant to this section binding on any
19 municipality or other entity, nor to render any failure by the
20 department to timely conduct the calculations or publish a report
21 required by this section to alter the deadlines or process set forth in
22 this section. The ultimate determination of a municipality's present
23 and prospective need shall be through the process as set forth
24 below.

25 f. (1) (a) With consideration of the calculations contained in
26 the relevant report published by the department pursuant to this
27 section, for each 10-year round of affordable housing obligations
28 beginning with the fourth round, a municipality shall determine its
29 present and prospective fair share obligation for affordable housing
30 in accordance with the formulas established in sections 6 and 7 of
31 P.L. , c. (C. and C.) (pending before the Legislature as
32 this bill) by resolution, which shall describe the basis for the
33 municipality's determination and bind the municipality to adopt a
34 housing element and fair share plan pursuant to paragraph (2) of
35 this subsection based on this determination as may be adjusted by
36 the program as set forth in this subsection.

37 (b) For the fourth round of affordable housing obligations, this
38 determination of present and prospective fair share obligation shall
39 be made by binding resolution no later than January 31, 2025.
40 After adoption of this binding resolution, the municipality shall file
41 an action regarding the resolution with the program no later than 48
42 hours following adoption. The resolution, along with the date of
43 filing with the program, shall be published on the program's
44 publicly accessible Internet website. The municipality shall also
45 publish the resolution on its publicly accessible Internet website, if
46 the municipality maintains one. If the municipality does not meet
47 this deadline, it immediately shall lose immunity from builder's
48 remedy litigation until such time as the municipality is determined

1 to have come into compliance with the "Fair Housing Act,"
2 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel
3 doctrine. A determination of the municipality's present and
4 prospective obligation may be established before a county level
5 housing judge as part of any resulting declaratory judgment action
6 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as
7 amended by P.L. , c. (C.) (pending before the Legislature
8 as this bill), or through builder's remedy litigation. If the
9 municipality meets this January 31 deadline, then the municipality's
10 determination of its obligation shall be established by default
11 beginning on March 1, 2025, as the municipality's obligation for
12 the fourth round, unless challenged by an interested party on or
13 before February 28, 2025. An interested party may file a challenge
14 with the program, after adoption of the binding resolution and prior
15 to March 1, 2025, alleging that the municipality's determination of
16 its present and prospective obligation does not comply with the
17 requirements of sections 6 and 7 of P.L. , c.
18 (C. and C.) (pending before the Legislature as this bill).
19 For the fifth round, and each subsequent new round of housing
20 obligations, the deadlines established in this subparagraph shall be
21 on the last day of January, the last day of February, and the first day
22 of March, respectively, of the year of the start of each new round.

23 (c) The Administrative Director of the Courts shall establish
24 procedures for the program to consider a challenge and resolve a
25 dispute initiated by an interested party pursuant to subparagraph (b)
26 of this paragraph. To resolve a challenge, the program shall apply
27 an objective assessment standard to determine whether or not the
28 municipality's calculation of its obligation is compliant with the
29 requirements of sections 6 and 7 of P.L. , c.
30 (C. and C.) (pending before the Legislature as this bill).
31 Any challenge must state with particularity how the municipal
32 calculation fails to comply with sections 6 and 7 of P.L. , c. (C.
33 and C.) (pending before the Legislature as this bill) and
34 include the challenger's own calculation of the fair share
35 obligations in compliance with sections 6 and 7 of P.L. , c. (C.
36 and C.) (pending before the Legislature as this bill). The
37 program shall establish procedures to summarily dismiss any
38 objection or challenge that does not meet these minimum standards.
39 For the purpose of efficiency, the program shall, in its own
40 discretion, permit multiple challenges to the same municipal
41 determination to be consolidated. The program's approach to
42 resolving a dispute may include: (i) a finding that the municipality's
43 determination of its present and prospective need obligation did not
44 facially comply with the requirements of sections 6 and 7 of P.L. ,
45 c. (C. and C.) (pending before the Legislature as this
46 bill) and thus the municipality's immunity shall be revoked; (ii) an
47 adjustment of the municipality's determination of its present and
48 prospective need obligation to comply with the requirements of

1 sections 6 and 7 of P.L. , c. (C. and C.) (pending
2 before the Legislature as this bill) without revoking immunity; or
3 (iii) a rejection of a challenge and affirm the municipality's
4 determination. The decision shall be provided to the municipality
5 and all parties that have filed challenges no later than March 31 of
6 the year when the current round is expiring and the new round is
7 beginning and concurrently posted on the program's Internet
8 website. The Administrative Director of the Courts shall establish
9 procedures for any further appellate review of such determinations,
10 and may establish an expedited process for consolidated review of
11 any such challenges by the Supreme Court, provided that any party
12 seeking appellate review shall not change the deadlines established
13 for municipal filing of a housing element and fair share plan, and
14 implementing ordinances.

15 (2) (a) A municipality shall adopt a housing element and fair
16 share plan as provided for by the "Fair Housing Act," P.L.1985,
17 c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate
18 zoning and other ordinances and resolutions to implement its
19 present and prospective obligation established in paragraph (1) of
20 this subsection on or before June 30, 2025. After adoption of the
21 housing element and fair share plan, and the proposal of drafts of
22 the appropriate zoning and other ordinances and resolutions, the
23 municipality shall within 48 hours of adoption or by June 30, 2025,
24 whichever is sooner, file the same with the program as part of the
25 action initiated pursuant to subparagraph (b) of paragraph (1) of this
26 subsection through the program's Internet website. Any
27 municipality that does not do so by June 30, 2025, shall not retain
28 immunity from builder's remedy litigation until such time as the
29 municipality is determined to have come into compliance with the
30 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the
31 Mount Laurel doctrine and shall be subject to review through the
32 declaratory judgment process as established in paragraph (3) of this
33 subsection. As part of its housing element and fair share plan, the
34 municipality shall include an assessment of the degree to which the
35 municipality has met its fair share obligation from the prior rounds
36 of affordable housing obligations as established by prior court
37 approval, or approval by the council, and determine to what extent
38 this obligation is unfulfilled or whether the municipality has credits
39 in excess of its prior round obligations. If a prior round obligation
40 remains unfulfilled, or a municipality never received an approval
41 from court or the council for any prior round, the municipality shall
42 address such unfulfilled prior round obligation in its housing
43 element and fair share plan. Units included as part of the
44 municipality's unfulfilled prior round obligation shall not count
45 towards the cap on units in the municipality's prospective need
46 obligation. In addressing prior round obligations, the municipality
47 shall retain any sites that, in furtherance of the prior round
48 obligation, are the subject of a contractual agreement with a

1 developer, or for which the developer has filed a complete
2 application seeking subdivision or site plan approval prior to the
3 date by which the housing element and fair share plan are required
4 to be submitted, and shall demonstrate how any sites that were not
5 built in the prior rounds continue to present a realistic opportunity,
6 which may include proposing changes to the zoning on the site to
7 make its development more likely, and which may also include the
8 dedication of municipal affordable housing trust fund dollars or
9 other monetary or in-kind resources. The municipality shall only
10 plan to replace any sites planned for development as provided by a
11 prior court approval, settlement agreement, or approval by the
12 council, with alternative development plans, if it is determined that
13 the previously planned sites no longer present a realistic
14 opportunity, and the sites in the alternative development plan
15 provide at least an equivalent number of affordable units and are
16 otherwise in compliance with the "Fair Housing Act," P.L.1985,
17 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a
18 municipality proposes to replace a site for which a complete
19 application seeking subdivision or site plan approval has not been
20 filed prior to date by which the housing element and fair share plan
21 is required to be submitted, there shall be a rebuttable presumption
22 in any challenge filed to the municipality's plan that any site for
23 which a zoning designation was adopted creating a realistic
24 opportunity for the development of a site prior to July 1, 2020, or
25 July 1 of every 10th year thereafter, as applicable, may be replaced
26 with one or more alternative sites that provide a realistic
27 opportunity for at least the same number of affordable units and is
28 otherwise in compliance with the "Fair Housing Act," P.L.1985,
29 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the
30 extent a municipality has credits, including bonus credits, from
31 units created during a prior round that are otherwise permitted to be
32 allocated toward the municipality's unfulfilled prior round
33 obligation or present or prospective need obligation in an upcoming
34 round, the municipality shall be entitled to rely on the rules,
35 including rules for bonus credits, applicable for the round during
36 which those credits were accumulated. If a municipality has credits
37 in excess of its prior round obligations, and such excess credits
38 represent housing that will continue to be deed-restricted and
39 affordable through the current round, the municipality may include
40 such housing, and applicable bonus credits, towards addressing the
41 municipality's new calculation of prospective need. Consistent
42 with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311),
43 the total number of bonus credits shall in no circumstance exceed
44 25 percent of the municipality's prospective obligation in any
45 round. The municipality may in its plan lower its prospective need
46 obligation to the extent necessary to prevent establishing a
47 prospective need obligation that requires the municipality to
48 provide a realistic opportunity for more than 1,000 housing units,

1 after the application of any excess credits, or to prevent a
2 prospective need obligation that exceeds 20 percent of the total
3 number of households in a municipality according to the most
4 recent federal decennial census, not including any prior round
5 obligation. If a municipality is subject to both a 1,000 unit cap or
6 20 percent cap it may apply whichever cap results in a lower
7 prospective need obligation. For the fifth round, and for each
8 subsequent new round of housing obligations, the deadlines in this
9 paragraph shall be June 30 for the adoption of the housing element
10 and fair share plan, and the proposal of drafts of the appropriate
11 zoning and other ordinances and resolutions to implement its
12 present and prospective obligation, of the year of the start of the
13 new round.

14 (b) Following the filing, in an action, of an adopted housing
15 element and fair share plan pursuant to subparagraph (a) of this
16 paragraph, an interested party may file a response on or before
17 August 31, 2025 alleging that the municipality's fair share plan and
18 housing element are not in compliance with the "Fair Housing Act,"
19 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine.
20 Such allegation shall not include a claim that a site on real property
21 proposed by the interested party is a better site than a site in the
22 plan, but rather shall be based on whether the housing element and
23 fair share plan as proposed is compliant with the "Fair Housing
24 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel
25 doctrine. To resolve a challenge, the program shall apply an
26 objective assessment standard to determine whether or not the
27 municipality's housing element and fair share plan is compliant
28 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)
29 and the Mount Laurel doctrine. Any interested party that files a
30 challenge shall specify with particularity which sites or elements of
31 the municipal fair share plan do not comply with the "Fair Housing
32 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel
33 doctrine, and the basis for alleging such non-compliance. The
34 program shall establish procedures to summarily dismiss any
35 objection or challenge that does not meet these minimum standards.
36 For the purpose of efficiency, the program shall, in its own
37 discretion, permit multiple challenges to the same municipal
38 housing element and fair share plan to be consolidated. If a
39 municipality's fair share plan and housing element is not challenged
40 on or before August 31, 2025, then the program shall review the fair
41 share plan and housing element for consistency and to determine
42 whether it is compliant with the "Fair Housing Act," P.L.1985,
43 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, and
44 issue a compliance certification unless these objective standards are
45 not met. The program shall facilitate communication between the
46 municipality and any interested parties for a challenge, and provide
47 the municipality until December 31, 2025 to commit to revising its
48 fair share plan and housing element in compliance with the changes

1 requested in the challenge, or provide an explanation as to why it
2 will not make all of the requested changes, or both. Upon
3 resolution of a challenge, the program shall issue compliance
4 certification, conditioned on the municipality's commitment, as
5 necessary, to revise its fair share plan and housing element in
6 accordance with the resolution of the challenge. The program may
7 also terminate immunity if it finds that the municipality is not
8 determined to come into constitutional compliance at any point in
9 the process. If by December 31, 2025, the municipality and any
10 interested party that filed a response have resolved the issues raised
11 in the response through agreement or withdrawal of the filing, then
12 the program shall review the fair share plan and housing element for
13 consistency and to determine whether it is compliant with the "Fair
14 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount
15 Laurel doctrine, and issue a compliance certification unless these
16 objective standards are not met. For the fifth round, and each
17 subsequent new round of housing obligations, the deadline
18 established in this subparagraph for an interested party to file a
19 challenge shall be August 31, and for the municipality to revise its
20 housing element and fair share plan in response, shall be December
21 31, of the year of the beginning of the new round.

22 (c) For the fourth round of affordable housing obligations, the
23 implementing ordinances and resolutions, proposed pursuant to
24 subparagraph (a) of this paragraph, and incorporating any changes
25 from the program, shall be adopted on or before March 15, 2026.
26 For the fifth round, and each subsequent new round of housing
27 obligations, the deadline established in this subparagraph for the
28 implementing ordinances and resolutions shall be on March 15 of
29 the year following the beginning of the new round. After adoption
30 of the implementing ordinances and resolutions by the municipality,
31 the municipality shall immediately file the ordinances and
32 resolutions with the program through the program's Internet
33 website. Failure to meet the March 15 deadline shall result in the
34 municipality losing immunity from builder's remedy litigation.

35 (d) The program may permit a municipality that still has a
36 remaining dispute by interested parties to retain immunity from
37 builder's remedy litigation into the year following the year in which
38 a new round begins if the program, or county level housing judge,
39 determines that the municipality has been unable to resolve the
40 issues disputed despite being determined to come into constitutional
41 compliance. The Administrative Director of the Courts shall
42 develop procedures to enable a county level housing judge to
43 resolve this dispute over the issuance of compliance certification
44 through a summary proceeding in Superior Court following the year
45 in which the new round begins. A judge shall be permitted to serve
46 as a county level housing judge for more than one county in the
47 same vicinage. The pendency of such a dispute shall not stay the

1 deadline for adoption of implementing ordinances and resolutions
2 pursuant to this paragraph.

3 (e) Once a municipality has received a compliance certification
4 or otherwise has had its fair share obligation and housing element
5 and fair share plan finally determined via judgment of repose or
6 other judgment, the municipality shall make the municipality's fair
7 share plan and housing element, as well as any subsequently
8 adopted implementing ordinances and resolutions, or amendments
9 thereto, available to the department and the program for publication
10 on the department's and program's respective Internet websites.

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

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

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

3 (d) A determination by the program as to the present and
4 prospective need obligation or as to issuance of compliance
5 certification pursuant to this section shall be considered a final
6 decision, subject to appellate review pursuant to the procedures set
7 forth in subparagraph (c) of paragraph (1) of subsection f. of this
8 section.

9 (e) A municipality shall not be deemed out of compliance with
10 the deadlines of P.L. , c. (C.) (pending before the
11 Legislature as this bill), or lose immunity from builder's remedy
12 litigation, due to a failure by the program to promptly maintain and
13 update its Internet website, or other operational failure of the
14 program.

15

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

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

1 section 3 of P.L. , c. (C.) (pending before the Legislature
2 as this bill).

3 b. **【Notwithstanding the provisions of subsection a. of this**
4 **section, a municipality which filed a housing element prior to the**
5 **effective date of P.L.1990, c.121, shall be permitted to petition for**
6 **substantive certification at any time within two years following that**
7 **filing, or within one year following the effective date of P.L.1990,**
8 **c.121, whichever shall result in permitting the municipality the**
9 **longer period of time within which to petition.】** (Deleted by
10 amendment, P.L. , c.) (pending before the Legislature as this
11 bill)

12 **【The Council shall establish procedures for】** c. (1) A
13 municipality or other interested party may file an action through the
14 program seeking a realistic opportunity review 【at the midpoint of
15 the certification period and shall provide for notice to the public】 at
16 the midpoint of the certification period and shall provide for notice
17 to the public, including a realistic opportunity review of any
18 inclusionary development site in the housing element and fair share
19 plan that has not received preliminary site plan approval prior to the
20 midpoint of the 10-year round. If such an action is initiated by a
21 municipality, the municipality shall propose one or more alternative
22 sites with an accompanying development plan or plans that provide
23 a realistic opportunity for the same number of affordable units and
24 is otherwise in compliance with the "Fair Housing Act," P.L.1985,
25 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine,
26 provided that if the facts demonstrate that the municipality or its
27 subordinate boards have prevented the site from receiving site plan
28 approval, then the program shall reject the municipality's challenge.

29 (2) Any party may file a request for information from the
30 program regarding the progress of development at any inclusionary
31 development site in the housing element and fair share plan of a
32 municipality, or at any alternative site proposed by the
33 municipality. The program may respond to a request independently
34 or in coordination with the department.

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

36
37 5. (New section) a. There is established an Affordable Housing
38 Dispute Resolution Program that shall have the purpose of
39 efficiently resolving disputes involving the "Fair Housing Act,"
40 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number
41 of members, of at least three and no more than seven members who
42 shall lead the administration of the program. The Chief Justice of
43 the Supreme Court shall update the assignment of designated Mount
44 Laurel judges to indicate which current or retired and on recall
45 judges of the Superior Court shall serve as members, within 40 days
46 following the effective date of P.L. , c. (C.) (pending
47 before the Legislature as this bill). The Chief Justice of the

1 Supreme Court may appoint other qualified experts as members if
2 sufficient current and retired judges are unavailable. The Chief
3 Justice of the Supreme Court shall take into consideration in
4 making such appointments experience in the employment of
5 alternative dispute resolution methods and in relevant subject
6 matter.

7 b. The Chief Justice of the Supreme Court shall designate a
8 member to serve as chair. The Chief Justice of the Supreme Court
9 shall make new appointments as needs arise for new appointments.

10 c. The program, in its discretion and in accordance with Rules of
11 Court, may consult or employ the services of one or more special
12 masters or staff to assist it in rendering determinations, resolving
13 disputes, and facilitating communication as required by
14 subparagraph (b) of paragraph (2) of subsection f. of section 3 of
15 P.L. , c. (C.) (pending before the Legislature as this bill).
16 In addition, the program may incorporate any existing or newly
17 established court mediation or alternative dispute resolution process
18 to assist the program in resolving disputes and facilitating
19 communication among municipalities and interested parties.

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

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

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

1 judge shall be permitted to serve as a county level housing judge for
2 more than one county in the same vicinage.

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

10

11 6. (New section) a. Municipal present need for each 10-year
12 round of affordable housing obligations shall be determined by
13 estimating the deficient housing units occupied by low- and
14 moderate-income households in the region, following a
15 methodology similar to the methodology used to determine third
16 round municipal present need, through the use of most recent
17 datasets made available through the federal decennial census and
18 the American Community Survey.

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

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

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

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

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

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

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

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

36 (2) Regional prospective need for a 10-year round of low- and
37 moderate-income housing obligations shall be determined through
38 the calculation provided in this subsection. Projected household
39 change for a 10-year round in a region shall be estimated by
40 establishing the household change experienced in the region
41 between the most recent federal decennial census, and the second-
42 most recent federal decennial census. This household change, if
43 positive, shall be divided by 2.5 to estimate the number of low- and
44 moderate-income homes needed to address low- and moderate-
45 income household change in the region, and to determine the
46 regional prospective need for a 10-year round of low- and
47 moderate-income housing obligations. If household change is zero
48 or negative, the number of low- and moderate-income homes

1 needed to address low- and moderate-income household change in
2 the region and the regional prospective need shall be zero.

3
4 7. (New section) a. The present and prospective fair share
5 obligation for low- and moderate-income housing for each
6 municipality in the State shall be determined as described in this
7 section. In addition, the March 8, 2018 unpublished decision of the
8 Superior Court, Law Division, Mercer County, In re Application of
9 Municipality of Princeton shall be referenced as to datasets and
10 methodologies that are not explicitly addressed by this section.
11 These determinations of municipal present and prospective need
12 shall be based on a determination of the present and prospective
13 regional need for low- and moderate-income housing, established
14 pursuant to section 6 of P.L. , c. (C.) (pending before the
15 Legislature as this bill). These calculations of municipal present
16 and prospective need shall use necessary datasets that are updated
17 to the greatest extent practicable.

18 b. A municipality's present need obligation shall be determined
19 by estimating the existing deficient housing units currently
20 occupied by low- and moderate-income households within the
21 municipality, following a methodology comparable to the
22 methodology used to determine third round present need, through
23 the use of datasets made available through the federal decennial
24 census and the American Community Survey.

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

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

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

40 (b) The municipality has a population density greater than
41 10,000 persons per square mile of land area; or

42 (c) The municipality has a population density of more than
43 6,000, but less than 10,000 persons per square mile of land area,
44 and less than five percent vacant parcels not used as farmland, as
45 measured by the average of:

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

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

3 (2) A municipality's equalized nonresidential valuation factor
4 shall be determined. To determine this factor, the changes in
5 nonresidential property valuations in the municipality, since the
6 beginning of the round preceding the round being calculated, shall
7 be calculated using data published by the Division of Local
8 Government Services in the department. The change in the
9 municipality's nonresidential valuations shall be divided by the
10 regional total change in nonresidential valuations to determine the
11 municipality's share of the regional change as the equalized
12 nonresidential valuation factor.

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

16 (a) The municipal share of the regional sum of the differences
17 between the median municipal household income, according to the
18 most recent American Community Survey Five-Year Estimates, and
19 an income floor of \$100 below the lowest median household
20 income in the region; and

21 (b) The municipal share of the regional sum of the differences
22 between the median municipal household incomes and an income
23 floor of \$100 below the lowest median household income in the
24 region, weighted by the number of the households in the
25 municipality.

26 (4) A municipality's land capacity factor shall be determined.
27 This factor shall be determined by estimating the area of
28 developable and redevelopable land in the municipality's
29 boundaries, and regional boundaries, that may accommodate
30 development through the use of the "land use / land cover data"
31 most recently published by the Department of Environmental
32 Protection, and weighing such land based on the planning area type
33 in which such land is located. After the weighing factors are
34 applied, the sum of the total developable and redevelopable land
35 area that may accommodate development in the municipality, and in
36 the region shall be determined. The municipality's share of its
37 region's developable and redevelopable land shall be its land
38 capacity factor. Developable and redevelopable land that may
39 accommodate development shall be weighted based on the planning
40 area type in which such land is located, as designated pursuant to
41 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111
42 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as
43 follows:

44 (a) Planning Area 1 (Metropolitan) shall have a weighting factor
45 of 1.0;

46 (b) Planning Area 2 (Suburban) shall have a weighting factor of
47 1.0;

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

1 lender shall give a notice of intention, which shall include a notice
2 of the right to cure the default as provided in section 5 of P.L.1995,
3 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in
4 advance of such action as provided in this section, to the residential
5 mortgage debtor, and, if the mortgage is secured by a residence for
6 which a restriction on affordability was recorded in the county in
7 which the property is located, the clerk of the municipality in which
8 the subject property is located, the municipal housing liaison, if one
9 has been appointed by the municipality [pursuant to the regulations
10 of the Council on Affordable Housing, and the Commissioner of
11 Community Affairs]. For the purposes of this section, "restriction
12 on affordability" means any conditions recorded with a mortgage or
13 a deed which would limit the sale of such property to income
14 qualified households pursuant to the rules adopted to effectuate the
15 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

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

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

27 (1) the particular obligation or real estate security interest;

28 (2) the nature of the default claimed;

29 (3) the right of the debtor to cure the default as provided in
30 section 5 of P.L.1995, c.244 (C.2A:50-57);

31 (4) what performance, including what sum of money, if any, and
32 interest, shall be tendered to cure the default as of the date specified
33 under paragraph (5) of this subsection c.;

34 (5) the date by which the debtor shall cure the default to avoid
35 initiation of foreclosure proceedings, which date shall not be less
36 than 30 days after the date the notice is effective, and the name and
37 address and phone number of a person to whom the payment or
38 tender shall be made;

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

43 (7) that if the lender takes the steps indicated pursuant to
44 paragraph (6) of this subsection c., a debtor shall still have the right
45 to cure the default pursuant to section 5 of P.L.1995, c.244
46 (C.2A:50-57), but that the debtor shall be responsible for the
47 lender's court costs and attorneys' fees in an amount not to exceed

1 that amount permitted pursuant to the Rules Governing the Courts
2 of the State of New Jersey;

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

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

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

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

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

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

43 (14) that if the property which is the subject of the mortgage has
44 more than one dwelling unit but less than five, one of which is
45 occupied by the debtor or a member of the debtor's immediate
46 family as the debtor's or member's residence at the time the loan is
47 originated, and is not properly maintained and meets the necessary
48 conditions for receivership eligibility, established pursuant to

1 section 4 of the "Multifamily Housing Preservation and
2 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential
3 mortgage lender shall file an order to show cause to appoint a
4 receiver; and

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

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

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

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

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

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

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

44

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

47 2. The New Jersey Council on Physical Fitness and Sports,
48 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is

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

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

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

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

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

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

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

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

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

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

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

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

34 g. Any individual who offers or negotiates terms of a
35 residential mortgage loan:

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

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

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

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

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

9

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

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

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

39 (cf: P.L.1997, c.411, s.11)

40

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

43 33. The Legislature finds and declares:

44 a. The collection of development fees from builders of
45 residential and non-residential properties has been authorized by the
46 court through the powers **delegated to the Council on Affordable**
47 **Housing** established pursuant to the "Fair Housing Act," P.L.1985,

1 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination
2 that the role of the Council on Affordable Housing has not
3 developed in practice as intended, the Legislature further
4 determines that authority relating to rulemaking on the collection of
5 residential and non-residential development fees is appropriately
6 delegated to the Department of Community Affairs, given the
7 department's existing roles related to local government finance and
8 the funding and financing of affordable housing throughout the
9 State.

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

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

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

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

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

1 impede the constitutional obligation to provide for a realistic
2 opportunity for housing for families at all income levels.

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

4

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

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

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

14 "Commissioner" means the Commissioner of Community
15 Affairs.

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

18 "Department" means the Department of Community Affairs.

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

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

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

43 "Non-residential development" means: (1) any building or
44 structure, or portion thereof, including but not limited to any
45 appurtenant improvements, which is designated to a use group other
46 than a residential use group according to the State Uniform
47 Construction Code promulgated to effectuate the "State Uniform
48 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),

1 including any subsequent amendments or revisions thereto; (2)
2 hotels, motels, vacation timeshares, and child-care facilities; and (3)
3 the entirety of all continuing care facilities within a continuing care
4 retirement community which is subject to the "Continuing Care
5 Retirement Community Regulation and Financial Disclosure Act,"
6 P.L.1986, c.103 (C.52:27D-330 et seq.).

7 "Non-residential development fee" means the fee authorized to
8 be 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).

10 "Relating to the provision of housing" shall be liberally
11 construed to include the construction, maintenance, or operation of
12 housing, including but not limited to the provision of services to
13 such housing and the funding of any of the above.

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

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

21

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

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

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

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

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

43 (1) parking lots and parking structures, regardless of whether the
44 parking lot or parking structure is constructed in conjunction with a
45 non-residential development, such as an office building, or whether
46 the parking lot is developed as an independent non-residential
47 development;

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

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

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

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

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

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

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

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

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

1 the payment shall be furnished by the Treasurer, to the
2 municipality.

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

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

18 (4) Beginning with the year after the enactment of P.L. , c.
19 (C.) (pending before the Legislature as this bill), by January
20 15, every municipality that is or has been authorized to retain and
21 expend non-residential development fees shall provide the
22 department with a detailed accounting of all such fees that have
23 been collected and expended previous year.

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

36 e. The construction official responsible for the issuance of a
37 building permit shall notify the local tax assessor of the issuance of
38 the first building permit for a development which may be subject to
39 a non-residential development fee. Within 90 days of receipt of that
40 notice, the municipal tax assessor, based on the plans filed, shall
41 provide an estimate of the equalized assessed value of the non-
42 residential development. The construction official responsible for
43 the issuance of a final certificate of occupancy shall notify the local
44 assessor of any and all requests for the scheduling of a final
45 inspection on property which may be subject to a non-residential
46 development fee. Within 10 business days of a request for the
47 scheduling of a final inspection, the municipal assessor shall
48 confirm or modify the previously estimated equalized assessed

1 value of the improvements of the non-residential development in
2 accordance with the regulations adopted by the Treasurer pursuant
3 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
4 development fee pursuant to sections 32 through 38 of P.L.2008,
5 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the
6 developer of the amount of the non-residential development fee.
7 Should the municipality fail to determine or notify the developer of
8 the amount of the non-residential development fee within 10
9 business days of the request for final inspection, the developer may
10 estimate the amount due and pay that estimated amount consistent
11 with the dispute process set forth in subsection b. of section 37 of
12 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-
13 residential development fee, provided the developer is in full
14 compliance with all other applicable laws, the municipality shall
15 issue a final certificate of occupancy for the subject property.
16 Failure of the municipality to comply with the timeframes or
17 procedures set forth in this subsection may subject it to penalties to
18 be imposed by the commissioner; any penalties so imposed shall be
19 deposited into the "New Jersey Affordable Housing Trust Fund"
20 established pursuant to section 20 of P.L.1985, c.222 as amended
21 by section 17 of P.L.2008, c.46 (C.52:27D-320).

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

26 Non-residential construction which is connected with the
27 relocation of the facilities of a for-profit hospital shall be subject to
28 the fee authorized to be imposed under this section to the extent of
29 the increase in equalized assessed valuation in accordance with
30 regulations to be promulgated by the Director of the Division of
31 Taxation, Department of the Treasury.

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

41 g. The Treasurer shall credit to the "Urban Housing Assistance
42 Fund," established pursuant to section 13 of P.L.2008, c.46
43 (C.52:27D-329.7) annually from the receipts of the fees authorized
44 to be imposed pursuant to this section an amount equal to \$20
45 million; all receipts in excess of this amount shall be deposited into
46 the "New Jersey Affordable Housing Trust Fund," established
47 pursuant to section 20 of P.L.1985, c.222 as amended by section 17

1 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of
2 that fund.

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

8
9 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to
10 read as follows:

11 36. a. The commissioner **【**, in consultation with the council,**】**
12 shall promulgate, in accordance with the provisions of the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), such regulations as are necessary for the prompt and effective
15 implementation of the provisions and purposes of **【**P.L.2008, c.46
16 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-
17 329.2), including, but not limited to, provisions for the payment of
18 any necessary administrative costs related to the assessment of
19 properties and collection of any development fees by a
20 municipality.

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

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

31

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

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

1 b. No affordable housing obligation shall be imposed
2 concerning a mixed use development that would result in an
3 affordable housing obligation greater than that which would have
4 been imposed if the residential portion of the mixed use
5 development had been developed independently of the non-
6 residential portion of the mixed use development.

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

16

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

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

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

32 b. A developer of a non-residential project that, prior to July
33 17, 2008, has been referred to a planning board by the State, a
34 governing body, or other public agency for review pursuant to
35 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to
36 the payment of a nonresidential development fee prior to the
37 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
38 entitled to a return of any moneys paid that represent the difference
39 between moneys committed prior to July 17, 2008 and moneys paid
40 on or after that date.

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

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

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

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

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

38
39 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to
40 read as follows:

41 3. a. There is established in, but not of, the department a Site
42 Improvement Advisory Board, to devise statewide site improvement
43 standards pursuant to section 4 of **【**this act**】** P.L.1993, c.32
44 (C.40:55D-40.4). The board shall consist of the commissioner or
45 **【**his**】** the commissioner's designee, who shall be a non-voting
46 member of the board, the Director of the Division of **【**Housing**】**
47 Codes and Standards in the Department of Community Affairs, who

1 shall be a voting member of the board, the Executive Director of the
2 New Jersey Housing and Mortgage Finance Agency, or the
3 executive director's designee, who shall be a voting member of the
4 board, and **【10】** nine other voting members, to be appointed by the
5 commissioner. The other members shall include two professional
6 planners, one of whom serves as a planner for a governmental entity
7 or whose professional experience is predominantly in the public
8 sector and who has worked in the public sector for at least the
9 previous five years and the other of whom serves as a planner in
10 private practice and has particular expertise in private residential
11 development and has been involved in private sector planning for at
12 least the previous five years, and one representative each from:

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

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

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

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

37

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

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

41 "Bonds" means any bonds, notes, interim certificates, debentures
42 or other obligations issued by a municipality, county,
43 redevelopment entity, or housing authority pursuant to P.L.1992,
44 c.79 (C.40A:12A-1 et al.).

45 "Comparable, affordable replacement housing" means newly-
46 constructed or substantially rehabilitated housing to be offered to a
47 household being displaced as a result of a redevelopment project,

1 that is affordable to that household based on its income under the
2 guidelines established by the **【Council on Affordable Housing in**
3 **the Department of Community Affairs】** New Jersey Housing and
4 Mortgage Finance Agency for maximum affordable sales prices or
5 maximum fair market rents, and that is comparable to the
6 household's dwelling in the redevelopment area with respect to the
7 size and amenities of the dwelling unit, the quality of the
8 neighborhood, and the level of public services and facilities offered
9 by the municipality in which the redevelopment area is located.

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

18 "Electric vehicle charging station" means an electric component
19 assembly or cluster of component assemblies designed specifically
20 to charge batteries within electric vehicles by permitting the transfer
21 of electric energy to a battery or other storage device in an electric
22 vehicle.

23 "Governing body" means the body exercising general legislative
24 powers in a county or municipality according to the terms and
25 procedural requirements set forth in the form of government
26 adopted by the county or municipality.

27 "Housing authority" means a housing authority created or
28 continued pursuant to this act.

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

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

47 "Persons of **【low and moderate income】** low- and moderate-
48 income" means persons or families who are, in the case of State

1 assisted projects or programs, so defined by the **【**Council on
2 Affordable Housing in the Department of Community Affairs**】** New
3 Jersey Housing and Mortgage Finance Agency, or in the case of
4 federally assisted projects or programs, defined as of **【**"low and
5 very low income"**】** "low- and very low-income" by the United
6 States Department of Housing and Urban Development.

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

9 "Public electric vehicle charging station" means an electric
10 vehicle charging station located at a publicly available parking
11 space.

12 "Public housing" means any housing for persons of **【**low and
13 moderate income**】** low- and moderate-income owned by a
14 municipality, county, the State or the federal government, or any
15 agency or instrumentality thereof.

16 "Public hydrogen fueling station" means publicly available
17 equipment to store and dispense hydrogen fuel to vehicles
18 according to industry codes and standards.

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

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

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

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

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

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

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

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

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

45 "Redevelopment project" means any work or undertaking
46 pursuant to a redevelopment plan; such undertaking may include
47 any buildings, land, including demolition, clearance or removal of
48 buildings from land, equipment, facilities, or other real or personal

1 properties which are necessary, convenient, or desirable
2 appurtenances, such as but not limited to streets, sewers, utilities,
3 parks, site preparation, landscaping, and administrative, community,
4 health, recreational, educational, and welfare facilities, and zero-
5 emission vehicle fueling and charging infrastructure.

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

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

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

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

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

26

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

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

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

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

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

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

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

1 (6) Cooperate with any other municipality, private, county, State
2 or federal entity to provide funds to the municipality or other
3 governmental entity and to homeowners, tenant associations,
4 nonprofit or private developers to acquire, construct, rehabilitate or
5 operate publicly assisted housing, and to provide rent subsidies for
6 persons of **low and moderate income** low- and moderate-income,
7 including the elderly, pursuant to applicable State or federal
8 programs;

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

14 (8) Cooperate with any State or federal entity to secure
15 mortgage assistance for any person of **low or moderate income**
16 low- or moderate-income;

17 (9) Provide technical assistance and support to nonprofit
18 organizations and private developers interested in constructing **low**
19 **and moderate income** low- and moderate-income housing;

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

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

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

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

36
37 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to
38 read as follows:

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

44 a. An inventory of the municipality's housing stock by age,
45 condition, purchase or rental value, occupancy characteristics, and
46 type, including the number of units affordable to **low and moderate**
47 **income** low- and moderate-income households and substandard

1 housing capable of being rehabilitated, and in conducting this
2 inventory the municipality shall have access, on a confidential basis
3 for the sole purpose of conducting the inventory, to all necessary
4 property tax assessment records and information in the assessor's
5 office, including but not limited to the property record cards;

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

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

15 d. An analysis of the existing and probable future employment
16 characteristics of the municipality;

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

24 f. A consideration of the lands that are most appropriate for
25 construction of **low and moderate income** low- and moderate-
26 income housing and of the existing structures most appropriate for
27 conversion to, or rehabilitation for, **low and moderate income**
28 low- and moderate-income housing, including a consideration of
29 lands of developers who have expressed a commitment to provide
30 **low and moderate income** low- and moderate-income housing;
31 and

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

39

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

42 1. Any municipality that receives an adjustment of its
43 prospective need obligations for the fourth round or subsequent
44 rounds based on a lack of vacant land shall as part of the process of
45 adopting and implementing its housing element and fair share plan
46 identify sufficient parcels likely to redevelop during the current
47 round of obligations to address at least 25 percent of the prospective

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

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

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

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

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

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

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

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

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

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1 24. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to

1 read as follows:

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

18 (1) Rezoning for densities necessary to assure the economic
19 viability of any inclusionary developments, either through
20 mandatory set-asides or density bonuses, as may be necessary to
21 meet all or part of the municipality's fair share in accordance with
22 **【the regulations of the council and】** the provisions of subsection h.
23 of this section;

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

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

33 (4) A plan for infrastructure expansion and rehabilitation and
34 conversion or redevelopment of unused or underutilized real
35 property, including existing structures, if necessary to assure the
36 achievement of the municipality's fair share of **【low and moderate**
37 **income】** low- and moderate-income housing;

38 (5) Donation or use of municipally owned land or land
39 condemned by the municipality for purposes of providing **【low and**
40 **moderate income】** low- and moderate-income housing;

41 (6) Tax abatements for purposes of providing **【low and**
42 **moderate income】** low- and moderate-income housing;

43 (7) Utilization of funds obtained from any State or federal
44 subsidy toward the construction of **【low and moderate income】**
45 low- and moderate-income housing;

- 1 (8) Utilization of municipally generated funds toward the
2 construction of **low and moderate income** low- and moderate-
3 income housing; and
- 4 (9) The purchase of privately owned real property used for
5 residential purposes at the value of all liens secured by the property,
6 excluding any tax liens, notwithstanding that the total amount of
7 debt secured by liens exceeds the appraised value of the property,
8 pursuant to regulations promulgated by the Commissioner of
9 Community Affairs pursuant to subsection b. of section 41 of
10 P.L.2000, c.126 (C.52:27D-311.2).
- 11 b. The municipality may provide for a phasing schedule for the
12 achievement of its fair share of **low and moderate income** low-
13 and moderate-income housing.
- 14 c. (Deleted by amendment, P.L.2008, c.46)
- 15 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
16 require a municipality to raise or expend municipal revenues in
17 order to provide **low and moderate income** low- and moderate-
18 income housing.
- 19 e. When a municipality's housing element includes the
20 provision of rental housing units in a community residence for the
21 developmentally disabled , for the mentally ill, or for persons with
22 head injuries, as those terms are defined in section 2 of P.L.1977,
23 c.448 (C.30:11B-2), or in transitional housing, which will be
24 affordable to persons of **low and moderate income** low- and
25 moderate-income, and for which adequate measures to retain such
26 affordability pursuant to paragraph (3) of subsection a. of this
27 section are included in the housing element, those housing units
28 shall be fully credited **as permitted under the rules of the council**
29 towards the fulfillment of the municipality's fair share of **low and**
30 **moderate income** low- and moderate-income housing. A
31 municipality shall not credit transitional housing units towards more
32 than 10 percent of the municipality's fair share obligation.
- 33 f. It having been determined by the Legislature that the
34 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
35 a public purpose, a municipality or municipalities may utilize public
36 monies to make donations, grants or loans of public funds for the
37 rehabilitation of deficient housing units and the provision of new or
38 substantially rehabilitated housing for **low and moderate income**
39 low- and moderate-income persons, providing that any private
40 advantage is incidental.
- 41 g. A municipality **which** that has received **substantive**
42 **certification from the council** approval of its housing element and
43 fair share plan for the current round, and **which** that has actually
44 effected the construction of the affordable housing units it is
45 obligated to provide, may amend its affordable housing element or
46 zoning ordinances without **the approval of the council** losing
47 immunity from builder's remedy litigation.

- 1 h. Whenever affordable housing units are proposed to be
2 provided through an inclusionary development, a municipality shall
3 provide, through its zoning powers, incentives to the developer,
4 which shall include increased densities and reduced costs **】, in**
5 **accordance with the regulations of the council and this subsection】.**
- 6 i. **【The council, upon the application of a】** A municipality and
7 a developer **【,】** may **【approve】** request a modification of a
8 compliance certification involving reduced affordable housing set-
9 asides or increased densities to ensure the economic feasibility of an
10 inclusionary development , if any such application demonstrates
11 how any shortfall in meeting the municipal fair share obligation will
12 then be addressed. Such a request may be granted only if the
13 municipality and developer have demonstrated that the project has
14 been impacted by market conditions beyond their reasonable
15 control.
- 16 j. A municipality may enter into an agreement with a
17 developer or residential development owner to provide a preference
18 for affordable housing to **【low and moderate income】** low- and
19 moderate-income veterans who served in time of war or other
20 emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-
21 8.10), of up to 50 percent of the affordable units in that particular
22 project. This preference shall be established in the applicant
23 selection process for available affordable units so that applicants
24 who are veterans who served in time of war or other emergency, as
25 referenced in this subsection, and who apply within 90 days of the
26 initial marketing period shall receive preference for the rental of the
27 agreed-upon percentage of affordable units. After the first 90 days
28 of the initial 120-day marketing period, if any of those units subject
29 to the preference remain available, then applicants from the general
30 public shall be considered for occupancy. Following the initial
31 120-day marketing period, previously qualified applicants and
32 future qualified applicants who are veterans who served in time of
33 war or other emergency, as referenced in this subsection, shall be
34 placed on a special waiting list as well as the general waiting list.
35 The veterans on the special waiting list shall be given preference for
36 affordable units, as the units become available, whenever the
37 percentage of preference-occupied units falls below the agreed upon
38 percentage. Any agreement to provide affordable housing
39 preferences for veterans pursuant to this subsection shall not affect
40 a municipality's ability to receive credit for the unit **【from the**
41 **council, or its successor】.**
- 42 k. In the fourth round, and in subsequent rounds of affordable
43 housing obligations, a municipality shall be able to receive one
44 credit against its affordable housing obligation for each unit of low-
45 or moderate-income housing, and shall not receive bonus credit for
46 any particular type of low- or moderate-income housing, unless
47 authority to obtain bonus credit is expressly provided pursuant to

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

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

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

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

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

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

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

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

12 (8) receive one unit of credit and one-half bonus credit for each
13 unit of low- or moderate-income housing in a 100 percent
14 affordable housing project toward which the municipality either
15 contributes property without which the project would not be
16 feasible, or makes contributions from the municipal affordable
17 housing trust fund that cover no less than 10 percent of the project
18 cost; and

19 (9) receive one unit of credit and one-half bonus credit for each
20 unit of very low-income housing for families above the 13 percent
21 of units required to be reserved for very low-income housing
22 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

23 1. A municipality may not satisfy more than 25 percent of the
24 affordable housing units, exclusive of any bonus credits, to address
25 its prospective need affordable housing obligation through the
26 creation of age-restricted housing. A municipality shall satisfy a
27 minimum of 50 percent of the actual affordable housing units,
28 exclusive of any bonus credits, created to address its prospective
29 need affordable housing obligation through the creation of housing
30 available to families with children and otherwise in compliance
31 with the requirements and controls established pursuant to section
32 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy
33 a minimum of 25 percent of the actual affordable housing units,
34 exclusive of any bonus credits, to address its prospective need
35 affordable housing obligation, through rental housing, including at
36 least half of that number available to families with children. All
37 units referred to in this section shall otherwise be in compliance
38 with the requirements and controls established pursuant to section
39 21 of P.L.1985, c.222 (C.52:27D-321).

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

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

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

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

32

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

35 20. There is established in the Department of Community
36 Affairs a separate trust fund, to be used for the exclusive purposes
37 as provided in this section, and which shall be known as the "New
38 Jersey Affordable Housing Trust Fund." The fund shall be a non-
39 lapsing, revolving trust fund, and all monies deposited or received
40 for purposes of the fund shall be accounted for separately, by source
41 and amount, and remain in the fund until appropriated for such
42 purposes. The fund shall be the repository of all State funds
43 appropriated for affordable housing purposes, including, but not
44 limited to, the proceeds from the receipts of the additional fee
45 collected pursuant to paragraph (2) of subsection a. of section 3 of
46 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
47 Statewide non-residential development fees collected pursuant to

1 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
2 reverting from municipal development trust funds, or other monies
3 as may be dedicated, earmarked, or appropriated by the Legislature
4 for the purposes of the fund. All references in any law, order, rule,
5 regulation, contract, loan, document, or otherwise, to the
6 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
7 mean the "New Jersey Affordable Housing Trust Fund." The
8 department shall be permitted to utilize annually up to 7.5 percent
9 of the monies available in the fund for the payment of any
10 necessary administrative costs related to the administration of the
11 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any
12 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et
13 al.).

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

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

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

36 b. The commissioner shall establish rules and regulations
37 governing the qualifications of applicants, the application
38 procedures, and the criteria for awarding grants and loans and the
39 standards for establishing the amount, terms, and conditions of each
40 grant or loan.

41 c. For any period which the **【council】** commissioner may
42 approve, the commissioner may assist affordable housing programs
43 **【which】** that are **【not】** located in municipalities **【whose housing**
44 **elements have been granted substantive certification or which are**
45 **not in furtherance of a regional contribution agreement】** that have a
46 pending request for compliance certification; provided that the
47 affordable housing program will meet all or part of a municipal

1 **【low and moderate income】** low- and moderate-income housing
2 obligation.

3 d. Amounts deposited in the "New Jersey Affordable Housing
4 Trust Fund" shall be targeted to regions based on the region's
5 percentage of the State's **【low and moderate income】** low- and
6 moderate-income housing need as determined **【by the council】**
7 pursuant to the low- and moderate-income household growth over
8 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.
9 (C.) (pending before the Legislature as this bill). Amounts in
10 the fund shall be applied for the following purposes in designated
11 neighborhoods:

12 (1) Rehabilitation of substandard housing units occupied or to
13 be occupied by **【low and moderate income】** low- and moderate-
14 income households;

15 (2) Creation of accessory **【apartments】** dwelling units to be
16 occupied by **【low and moderate income】** low- and moderate-
17 income households;

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

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

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

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

40 (7) Other housing programs for **【low and moderate income】**
41 low- and moderate-income housing, including, without limitation,
42 (a) infrastructure projects directly facilitating the construction of
43 **【low and moderate income】** low- and moderate-income housing not
44 to exceed a reasonable percentage of the construction costs of the
45 **【low and moderate income】** low- and moderate-income housing to
46 be provided and (b) alteration of dwelling units occupied or to be
47 occupied by households of **【low or moderate income】** low- or

1 moderate-income and the common areas of the premises in which
2 they are located in order to make them accessible to persons with
3 disabilities.

4 e. Any grant or loan agreement entered into pursuant to this
5 section shall incorporate contractual guarantees and procedures by
6 which the division **【will】** shall ensure that any unit of housing
7 provided for **【low and moderate income】** low- and moderate-
8 income households shall continue to be occupied by **【low and**
9 **moderate income】** low- and moderate-income households for **【at**
10 **least 20 years】** a period that conforms to the requirements of
11 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)
12 following the award of the loan or grant, except that the division
13 may approve a guarantee for a period of less **【than 20 years】**
14 duration where necessary to ensure project feasibility.

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

33 g. In addition to other grants or loans awarded pursuant to this
34 section, and without regard to any limitations on such grants or
35 loans for any other purposes herein imposed, the commissioner
36 shall annually allocate such amounts as may be necessary in the
37 commissioner's discretion, and in accordance with section 3 of
38 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
39 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
40 287.1 et al.). Such rental assistance grants shall be deemed
41 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
42 301 et al.), in order to meet the housing needs of certain **【low**
43 **income】** low-income households who may not be eligible to occupy
44 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301
45 et al.).

46 h. The department and the State Treasurer shall submit the
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

1 by the State Auditor or State Comptroller, at the discretion of the
2 Treasurer. In addition, the department shall prepare an annual
3 report for each fiscal year, and submit it by November 30th of each
4 year to the Governor and the Legislature, and the Joint Committee
5 on Housing Affordability, or its successor, and post the information
6 to its **【web site】** Internet website, of all activity of the fund,
7 including details of the grants and loans by number of units, number
8 and income ranges of recipients of grants or loans, location of the
9 housing renovated or constructed using monies from the fund, the
10 number of units upon which affordability controls were placed, and
11 the length of those controls. The report also shall include details
12 pertaining to those monies allocated from the fund for use by the
13 State rental assistance program pursuant to section 3 of P.L.2004,
14 c.140 (C.52:27D-287.3) and subsection g. of this section.

15 i. The commissioner may award or grant the amount of any
16 appropriation deposited in the "New Jersey Affordable Housing
17 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
18 320.1) to municipalities pursuant to the provisions of section 39 of
19 P.L.2009, c.90 (C.40:55D-8.8).
20 (cf: P.L.2017, c.131, s.200)

21

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

24 21. The agency shall establish affordable housing programs to
25 assist municipalities in meeting the obligation of developing
26 communities to provide **【low and moderate income】** low- and
27 moderate-income housing.

28 a. Of the bond authority allocated to it under section 24 of
29 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a
30 reasonable period of time established by its board, no less than
31 **【25%】** 25 percent to be used in conjunction with housing to be
32 constructed or rehabilitated with assistance under **【this act】**
33 P.L.1985, c.222 (C.52:27D-301 et al.).

34 b. The agency shall to the extent of available funds, award
35 assistance to affordable housing programs located in municipalities
36 whose housing elements have **【received substantive】** obtained
37 compliance certification **【from the council】** , or which have been
38 subject to a builder's remedy **【or which are in furtherance of a**
39 **regional contribution agreement approved by the council】**. During
40 **【the first 12 months from the effective date of this act and for】** any
41 **【additional】** period which the **【council】** agency may approve, the
42 agency may assist affordable housing programs **【which are not**
43 **located in municipalities whose housing elements have been granted**
44 **substantive certification or which are not in furtherance of a**
45 **regional contribution agreement】** that have a pending request for
46 compliance certification; provided the affordable housing program

1 will meet all or in part a municipal **【low and moderate income】**
2 low- and moderate-income housing obligation.

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

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

12 (1) Assistance for home purchase and improvement including
13 interest rate assistance, down payment and closing cost assistance,
14 and direct grants for principal reduction;

15 (2) Rental programs including loans or grants for developments
16 containing **【low and moderate income】** low- and moderate-income
17 housing, moderate rehabilitation of existing rental housing,
18 congregate care and retirement facilities;

19 (3) Financial assistance for the conversion of nonresidential
20 space to residences;

21 (4) Other housing programs for **【low and moderate income】**
22 low- and moderate-income housing, including infrastructure
23 projects directly facilitating the construction of **【low and moderate**
24 **income】** low- and moderate-income housing; and

25 (5) Grants or loans to municipalities, housing sponsors and
26 community organizations to encourage development of innovative
27 approaches to affordable housing, including:

28 (a) Such advisory, consultative, training and educational
29 services as will assist in the planning, construction, rehabilitation
30 and operation of housing; and

31 (b) Encouraging research in and demonstration projects to
32 develop new and better techniques and methods for increasing the
33 supply, types and financing of housing and housing projects in the
34 State.

35 e. The agency shall establish procedures and guidelines
36 governing the qualifications of applicants, the application
37 procedures and the criteria for awarding grants and loans for
38 affordable housing programs and the standards for establishing the
39 amount, terms and conditions of each grant or loan.

40 f. **【In consultation with the council, the】** The agency , in
41 consultation with the department, shall establish requirements and
42 controls to **【insure】** ensure the maintenance of housing assisted
43 under **【this act】** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable
44 to **【low and moderate income】** low- and moderate-income
45 households for a period of not less than 40 years for rental units and
46 20 years for for-sale units; provided that the agency **【may establish**
47 a shorter period upon a determination that the economic feasibility

1 of the program is jeopardized by the requirement and the public
2 purpose served by the program outweighs the shorter period **】** may
3 update or amend any controls previously adopted by the agency, in
4 consultation with the Council on Affordable Housing, prior to the
5 effective date of P.L. , c. (C.) (pending before the
6 Legislature as this bill), provided that the requirements and controls
7 shall, at a minimum, be consistent with the controls as in effect
8 immediately prior to the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill), including, but not
10 limited to, any requirements concerning bedroom distributions,
11 affordability averages, and affirmative marketing. The controls
12 may include, among others, requirements for recapture of assistance
13 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et
14 al.) or restrictions on return on equity in the event of failure to meet
15 the requirements of the program. With respect to rental housing
16 financed by the agency pursuant to **【this act】** P.L.1985, c.222
17 (C.52:27D-301 et al.) or otherwise which promotes the provision or
18 maintenance of **【low and moderate income】** low- and moderate-
19 income housing, the agency may waive restrictions on return on
20 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)
21 which is gained through the sale of the property or of any interest in
22 the property or sale of any interest in the housing sponsor. The
23 agency shall promulgate updated regulations no later than nine
24 months following the effective date of P.L. , c. (C.)
25 (pending before the Legislature as this bill). All parties may
26 continue to rely on regulations previously adopted by the agency
27 pursuant to the authority provided by this section as in effect
28 immediately prior to the effective date of P.L. , c. (C.)
29 (pending before the Legislature as this bill) until new rules and
30 regulations are adopted by the agency. Notwithstanding the
31 provisions of the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation
33 with department, may adopt, immediately, upon filing with the
34 Office of Administrative Law, said regulations, which shall be
35 effective for a period not to exceed one year from the date of the
36 filing. The agency shall thereafter amend, adopt, or readopt the
37 regulations in accordance with the requirements of P.L.1968, c.410
38 (C.52:14B-1 et seq.).

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

46 h. The agency shall provide assistance, through its bonding
47 powers or in any other manner within its powers, to the grant and

1 loan program established pursuant to section 20 of P.L.1985, c.222
2 (C.52:27D-320).

3 i. (1) The department shall promulgate processes and standards
4 for the certification of administrative agents and municipal housing
5 liaisons in the State, as well as standards for measuring
6 performance of and enforcing compliance by administrative agents
7 and municipal housing liaisons in implementing the affordable
8 housing requirements and controls established pursuant to
9 subsection f. of this section.

10 (2) Administrative agents shall be responsible for implementing
11 the requirements and controls set by the regulations promulgated
12 pursuant to subsection (f) of this section. The department may
13 bring via summary proceeding any findings of violation of the
14 responsibilities set forth in this section before a county level
15 housing judge, to docket the violation and issue corrective orders
16 and levy fines.

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

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

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

33 (6) Notwithstanding the provisions of the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
35 contrary, the department may adopt, immediately, upon filing with
36 the Office of Administrative Law, regulations to implement the
37 provisions of this subsection, which shall be effective for a period
38 not to exceed one year from the date of the filing. The department
39 shall thereafter amend, adopt, or readopt the regulations in
40 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
41 et seq.).

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

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

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

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

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

17

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

20 7. **[The council shall coordinate and review the housing**
21 **elements as filed pursuant to section 11 of P.L.1985, c.222**
22 **(C.52:27D-311), and the housing activities under section 20 of**
23 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to]**
24 Housing elements and fair share plans adopted pursuant to section 3
25 of P.L. , c. (C.) (pending before the Legislature as this bill)
26 shall ensure that at least 13 percent of the housing units made
27 available for occupancy by low-income and **[moderate income]**
28 moderate-income households to address a municipality's
29 prospective need obligation will be reserved for occupancy by very
30 low income households, as that term is defined pursuant to section 4
31 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units
32 made available for families with children. The 13 percent shall
33 count towards the minimum 50 percent of the housing units
34 required to be made available for occupancy by low-income
35 households to address a municipality's prospective need obligation.
36 Nothing in this section shall require that a specific percentage of the
37 units in any specific project be reserved as very **[low income]** low-
38 income housing; provided, however, that a municipality shall not
39 receive bonus credits for the provision of housing units reserved for
40 occupancy by very **[low income]** low-income households unless
41 the 13 percent target has been exceeded within that municipality **[.**
42 The council shall coordinate all efforts to meet the goal of this
43 section in a manner that will result in a balanced number of housing
44 units being reserved for very low income households throughout all
45 housing regions. For the purposes of this section, housing activities
46 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include
47 any project-based assistance provided from the "New Jersey

1 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140
2 (C.52:27D-287.1 et al.), regardless of whether the housing activity
3 is counted toward the municipal obligation under the "Fair Housing
4 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】**, and that the agency
5 shall update the regulations adopted pursuant to section 21 of
6 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for
7 very low-income housing inconsistent with the percentages and
8 definitions established pursuant to P.L. , c. (C.) (pending
9 before the Legislature as this bill) with the percentage and
10 definition specified in this section.
11 (cf: P.L.2008, c.46, s.7)

12
13 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
14 read as follows:

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

24 (2) No later than 90 days following the enactment of P.L. , c.
25 (C.) (pending before the Legislature as this bill), any
26 municipality that is or has been authorized to impose and collect
27 development fees from developers of residential property, or
28 payments in lieu of constructing affordable housing, shall provide
29 the Department of Community Affairs with a detailed accounting of
30 all such fees that have been collected and expended since the
31 inception of the municipal authorization to collect the fees.

32 (3) Beginning with the year after the enactment of P.L. , c.
33 (C.) (pending before the Legislature as this bill), by January
34 15, every municipality that is or has been authorized to impose and
35 collect development fees from developers of residential property, or
36 payments in lieu of constructing affordable housing, shall provide
37 the Department of Community Affairs with a detailed accounting of
38 all such fees that have been collected and expended the previous
39 year.

40 (4) A municipality may not spend or commit to spend any
41 affordable housing development fees, including Statewide non-
42 residential fees collected and deposited into the municipal
43 affordable housing trust fund, without first obtaining the 【council's】
44 approval of the expenditure as part of its compliance certification or
45 by the department. A municipality shall include in its housing
46 element and fair share plan adopted pursuant to section 3 of P.L. ,
47 c. (C.) (pending before the Legislature as this bill) a

1 spending plan for current funds in the municipal affordable housing
2 trust fund and projected funds through the current round. Review
3 of that spending plan for consistency with applicable law and the
4 municipality's Housing Element and Fair Share Plan shall be part of
5 the process specified in section 3 of P.L. , c. (C.) (pending
6 before the Legislature as this bill). The [council] department shall
7 promulgate updated regulations no later than nine months following
8 the effective date of P.L. , c. (C.) (pending before the
9 Legislature as this bill) regarding the establishment, administration,
10 reporting, and enforcement of the expenditure of affordable housing
11 development fees by municipalities, which shall include
12 establishing an expedited process for approving spending plan
13 expenditures for emergent opportunities to create affordable
14 housing after a municipality has obtained compliance certification
15 and procedures for monitoring the collection and expenditure of
16 trust funds. The department shall develop and publish on the
17 department's Internet website a detailed summary of the municipal
18 affordable housing trust fund expenditures for each municipality,
19 and shall update each summary on an annual basis. As part of the
20 regulations adopted pursuant to this section and section 10 of
21 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt
22 reporting requirements applicable to municipal affordable housing
23 trust funds to facilitate fulfillment of the department's obligations
24 pursuant to this section. Municipalities may continue to rely on
25 regulations on development fees and spending plans previously
26 adopted by the council until new rules and regulations are adopted
27 by the department. The [council] department shall have
28 [exclusive] jurisdiction regarding the enforcement of these
29 regulations, provided that any municipality which is not in
30 compliance with the regulations adopted by the [council]
31 department may be subject to forfeiture of any or all funds
32 remaining within its municipal trust fund. Any funds so forfeited
33 shall be deposited into the "New Jersey Affordable Housing Trust
34 Fund" established pursuant to section 20 of P.L.1985, c.222
35 (C.52:27D-320).

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] department.

41 c. (1) A municipality may only spend development fees for an
42 activity approved by the [council] department to address the
43 municipal fair share obligation, or approved as part of compliance
44 certification.

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

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

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

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

14 (a) Affordability assistance programs may include down
15 payment assistance, security deposit assistance, low interest loans,
16 common maintenance expenses for units located in condominiums,
17 rental assistance, and any other program authorized by the
18 **[council]** department.

19 (b) Affordability assistance to households earning 30 percent or
20 less of median income may include buying down the cost of **[low**
21 **income]** low-income units in a municipal fair share plan to make
22 them affordable to households earning 30 percent or less of median
23 income. The use of development fees in this manner shall not
24 entitle a municipality to bonus credits except as may **[be provided**
25 **by the rules of the council]** otherwise be allowed by applicable
26 precedent.

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

33 (5) Not more than 20 percent of the revenues collected from
34 development fees shall be expended on administration, in
35 accordance with rules of the **[council]** department. Such
36 administration may include expending a portion of its affordable
37 housing trust fund on actions and efforts reasonably related to the
38 determination of its fair share obligation and the development of its
39 housing element and fair share plan pursuant to paragraphs (1) and
40 (2) of subsection f. of section 3 of P.L. , c. (C.) (pending
41 before the Legislature as this bill), and for expenses that are
42 reasonably necessary for compliance with the processes of the
43 program, including but not limited to, the costs to the municipality
44 of resolving a challenge under the program.

45 d. The **[council]** department shall establish a time by which all
46 development fees collected within a calendar year shall be
47 expended; provided, however, that all fees shall be committed for

1 expenditure within four years from the date of collection. A
2 municipality that fails to commit to expend the balance required in
3 the development fee trust fund by the time set forth in this section
4 shall be required by the council to transfer the remaining unspent
5 balance at the end of the four-year period to the "New Jersey
6 Affordable Housing Trust Fund," established pursuant to section 20
7 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46
8 (C.52:27D-329.1 et al.), to be used in the housing region of the
9 transferring municipality for the authorized purposes of that fund.

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

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

21
22 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended
23 to read as follows:

24 10. a. The **【council】** department shall maintain on its Internet
25 website, and also publish on **【a regular】** an annual basis, an up-to-
26 date municipal status report **【concerning the petitions for**
27 **substantive certification of each municipality that has submitted to**
28 **the council's jurisdiction, and shall collect and publish】** based on its
29 collection and publication of information concerning the number
30 affordable of housing units actually constructed, construction starts,
31 certificates of occupancy granted, **【rental units maintained, and the**
32 **number of housing units transferred or sold within the previous 12-**
33 **month period】** the start and expiration dates of deed restrictions,
34 and residential and non-residential development fees collected and
35 expended, including purposes and amounts of such expenditures,
36 along with the current balance in the municipality's affordable
37 housing trust funds. With respect to units actually constructed, the
38 information shall specify the characteristics of the housing,
39 including housing type, tenure, affordability level, number of
40 bedrooms, date and expiration of affordability controls, and whether
41 occupancy is reserved for families, senior citizens, or other special
42 populations. **【No later than 60 months after the effective date of**
43 **P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require**
44 **each municipality, as a condition of substantive certification, to**
45 **provide, in a standardized electronic media format as determined by**
46 **the council, the details of the fair share plan as adopted by the**

1 municipality and approved by the council. The council shall
2 publish and maintain such approved plans on its website.】

3 b. (1) No later than 90 days following the enactment of P.L. _____,
4 c. (C. _____) (pending before the Legislature as this bill), each
5 municipality shall provide the department with the information
6 necessary to comply with this section.

7 (2) Beginning with the year after the enactment of P.L. _____, c.
8 (C. _____) (pending before the Legislature as this bill), by January
9 15, each municipality shall provide the department with the
10 information necessary to comply with this section.

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

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

18

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

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

40 b. Subject to the provisions of subsection d. of this section, a
41 developer of a project consisting of newly-constructed residential
42 units being financed in whole or in part with State funds, including,
43 but not limited to, transit villages designated by the Department of
44 Transportation and units constructed on State-owned property, shall
45 be required to reserve at least 20 percent of the residential units
46 constructed for occupancy by **【low or moderate income】** low- or
47 moderate-income households, as those terms are defined in section

1 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as
2 required under the rules of the [council, unless the municipality in
3 which the property is located has received substantive certification
4 from the council and such a reservation is not required under the
5 approved affordable housing plan, or the municipality has been
6 given a judgment of repose or a judgment of compliance by the
7 court, and such a reservation is not required under the approved
8 affordable housing plan] agency.

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

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

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

40 (4) The coordination of affordable housing opportunities by
41 regional entities as identified in this section shall not include
42 activities which would provide housing units to be located in those
43 municipalities that are eligible to receive aid under the "Special
44 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
45 are coextensive with a school district which qualified for
46 designation as a "special needs district" pursuant to the "Quality
47 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at
48 any time in the last 10 years have been qualified to receive

1 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall
2 within the jurisdiction of any of the regional entities specified in
3 subsection a. of this section.】 (Deleted by amendment,
4 P.L. , c.) (pending before the Legislature as this bill)

5 d. Notwithstanding the provisions of subsection b. of this
6 section, or any other law or regulation to the contrary, for purposes
7 of mixed use projects or qualified residential projects in which a
8 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-
9 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90
10 (C.34:1B-209.3), or both, an "eligible municipality," as defined in
11 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of
12 deciding the percentage of newly-constructed residential units
13 within the project, up to 20 percent of the total, required to be
14 reserved for occupancy by **【low or moderate income】** low- or
15 moderate-income households. For a mixed use project or a
16 qualified residential project that has received preliminary or final
17 site plan approval prior to the effective date of P.L.2011, c.89, the
18 percentage shall be deemed to be the percentage, if any, of units
19 required to be reserved for **【low or moderate income】** low- or
20 moderate-income households in accordance with the terms and
21 conditions of such approval.
22 (cf: P.L.2011, c.89, s.5)

23
24 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to
25 read as follows:

26 3. As used in this act:

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

30 "Agency" means the New Jersey Housing and Mortgage Finance
31 Agency.

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

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

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

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

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

46 "Housing region" means a housing region as defined in
47 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,
48 c.222 (C.52:27D-304) and determined **【by the Council on**

1 Affordable Housing pursuant to section 7 of that act, P.L.1985,
2 c.222 (C.52:27D-307) pursuant to subsection b. of section 6 of
3 P.L. , c. (C.) (pending before the Legislature as this bill).

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

10 "Low income" means a gross annual household income equal to
11 50% or less of the median gross annual household income for
12 households of the same size within the relevant housing region.

13 "Moderate income" means a gross annual household income
14 equal to not more than 80%, but more than 50% of the median gross
15 annual household income for households of the same size within the
16 relevant housing region.

17 "Program" means the Affordable Home Ownership Opportunities
18 Program created by this act.

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

32 "Substantial rehabilitation" means repair, reconstruction or
33 renovation which (1) costs in excess of 60% of the fair market value
34 of a rehabilitated dwelling after such repair, reconstruction or
35 renovation, or (2) renders a previously vacant and uninhabitable
36 dwelling safe, sanitary and decent for residential purposes, or (3)
37 converts to safe, sanitary and decent residential use a structure
38 previously in non-residential use.

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

40

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

43 7. A project of new construction or substantial rehabilitation by
44 a nonprofit organization shall be eligible for a loan under this act if
45 (1) the homes to be constructed or substantially rehabilitated under
46 the project are located within an identifiable neighborhood in which
47 median family income does not exceed the current standard of
48 "moderate income" pursuant to the contemporaneous standards [of

1 the Council on Affordable Housing】 established pursuant to the
2 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the
3 homes to be constructed or substantially rehabilitated under the
4 project are sufficient in number and located on the same or
5 contiguous parcels of land or within such proximity to each other as
6 to render the cost per unit of housing practicable for acquisition by
7 lower-income purchasers; and (3) each home constructed or
8 substantially rehabilitated within the project will conform to all
9 requirements of the State Uniform Construction Code, except as to
10 the waiver of any fee or other requirement pursuant to subsection b.
11 of section 9 of this act.
12 (cf: P.L.1995, c.343, s.7)

13

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

16 3. As used in this act:

17 "Agency" means the New Jersey Housing and Mortgage Finance
18 Agency.

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

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

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

31 "Eligible purchaser" means a purchaser of a dwelling unit in an
32 eligible project who fulfills the definition of a senior or person with
33 disability pursuant to this section, is of low or moderate income and
34 to whom a loan may be made under the program pursuant to section
35 4 of P.L.1998, c.128 (C.55:14K-75).

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

39 "Housing region" means a housing region as defined in
40 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and
41 determined 【by the Council on Affordable Housing pursuant to
42 section 7 of P.L.1985, c.222 (C.52:27D-307)】 pursuant to
43 subsection b. of section 6 of P.L. , c. (C.) (pending before
44 the Legislature as this bill).

45 "Low income" means a gross annual household income equal to
46 50% or less of the median gross annual household income for
47 households of the same size within the relevant housing region.

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

5 "Person with disability" means any person who is 18 years of age
6 or older and who fulfills the definition of having a "disability"
7 pursuant to section 3 of the "Americans with Disabilities Act of
8 1990," 42 U.S.C. s.12102).

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

12 "Qualified housing sponsor" means any corporation or
13 association of persons organized under the New Jersey Statutes, or
14 any other corporation having for one of its purposes the
15 improvement of realistic opportunities for low income and moderate
16 income housing, as defined pursuant to the "Fair Housing Act,"
17 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by
18 virtue of past activities, qualifications of staff or board, or other
19 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-
20 72 et seq.).

21 "Retrofitting" means renovating or remodeling an existing
22 residential or non-residential structure to allow for cooperative
23 living.

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

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

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

33

34 36. (New section) a. (1) Notwithstanding the provisions of the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.) to the contrary, the Commissioner of Community Affairs
37 shall, in consultation with the Administrative Director of the Courts
38 and the Executive Director of the New Jersey Housing and
39 Mortgage Finance Agency, adopt, immediately upon filing with the
40 Office of Administrative Law, no later than nine months after the
41 effective date of P.L. , c. (C.) (pending before the
42 Legislature as this bill), such transitional rules and regulations as
43 necessary for the implementation of P.L. , c. (C.) (pending
44 before the Legislature as this bill), including for the identification
45 of any vestigial duties of the Council on Affordable Housing and
46 for the transfer of those duties within the Department of Community
47 Affairs to the extent that those duties are not otherwise assumed,
48 pursuant to P.L. , c. (C.) (pending before the Legislature as

1 this bill), by municipalities or the Affordable Housing Dispute
2 Resolution Program.

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

7 b. The Executive Director of the New Jersey Housing and
8 Mortgage Finance Agency shall adopt, pursuant to the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.), no later than nine months after the effective date of P.L. , c.
11 (C.) (pending before the Legislature as this bill), rules and
12 regulations to update the Uniform Housing Affordability Controls
13 as required pursuant to the "Fair Housing Act," P.L.1985, c.222
14 (C.52:27D-301 et al.). As part of updating the Uniform Housing
15 Affordability Controls, the agency shall set rules establishing that,
16 for the purpose of low- and moderate-income rental units, a 40-year
17 minimum deed restriction shall be required. For the purpose of for-
18 sale units, a 20-year minimum deed restriction shall be required.

19

20 37. The following sections are repealed:

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

44

45 38. a. There is appropriated to the Affordable Housing Dispute
46 Resolution Program, established pursuant to subsection a. of section
47 5 of P.L. , c. (C.) (pending before the Legislature as this
48 bill), from the General Fund \$12,000,000 for the purposes of

1 carrying out its responsibilities for the fourth round of affordable
2 housing obligations, as established pursuant to section 5 of
3 P.L. , c. (C.) (pending before the Legislature as this bill).

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

8
9 39. This act shall take effect immediately, and shall apply to
10 each new round of affordable housing obligations that begins
11 following enactment.

12
13
14 STATEMENT

15
16 This bill would abolish the Council on Affordable Housing
17 (COAH), initially established by the "Fair Housing Act," and would
18 establish a process to enable a municipality to determine its own
19 present and prospective fair share affordable housing obligation
20 based on the formulas established in the bill, as calculated the
21 Department of Community Affairs (DCA). In advance of the
22 fourth, 10-year round of affordable housing obligations, beginning
23 on July 1, 2025, the bill requires DCA to complete these
24 calculations, and provide for their publication, on or before August
25 1, 2024.

26 The bill permits a municipality to diverge from DCA's
27 calculations in determining its obligation as long as it adheres to the
28 methodology established by the bill. In advance of the fourth
29 round, the bill requires a municipality to adopt its obligation by
30 binding resolution, on or before January 31, 2025, in order to be
31 assured of protection from a builder's remedy lawsuit, as defined in
32 the bill, through which a municipality may otherwise be compelled
33 to permit development, when the fourth round begins. If the
34 municipality meets this deadline, then the municipality's
35 determination of its obligation would be established by default,
36 beginning on March 1, 2025, as the municipality's obligation for
37 the fourth round. However, if a challenge is filed with the
38 "Affordable Housing Dispute Resolution Program" ("program"),
39 established in the bill, on or before February 28, 2025, the program
40 would be required to facilitate a resolution of the dispute prior to
41 April 1, 2025.

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

47 A municipality would be required to submit its adopted fair share
48 plan and housing element to the program. The bill permits an

1 interested party to initiate a challenge to a municipal fair share plan
2 and housing element, if submitted through the program on or before
3 August 31, 2025. The program would facilitate communication
4 over the challenge, and provide the municipality until December 31,
5 2025 to commit to revising its fair share plan and housing element
6 in response to the challenge, or provide an explanation as to why it
7 will not make all or the requested changes, or both. The bill
8 requires municipalities to adopt associated changes to municipal
9 ordinances on or before March 15, 2026. If a municipality fails to
10 meet these deadlines, then the immunity of the municipality from
11 builder's remedy litigation would end unless the program
12 determines that the municipality's immunity shall be extended. If a
13 municipality fails to adhere to any of these deadlines due to
14 circumstances beyond the municipality's control, the bill directs the
15 program to permit a grace period for the municipality to come into
16 compliance with the timeline, the length of which, and effect of
17 which on later deadlines, would be determined on a case-by-case
18 basis.

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

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

38 All parties would be required to bear their own fees and costs for
39 proceedings within the program. A determination by the program
40 as to municipal obligations or compliance certification would be
41 considered a final decision, subject to appellate review.

42 The Chief Justice of the Supreme Court would appoint an odd
43 number of at least three and no more than seven members to serve
44 as program leaders for the program established by the bill,
45 consisting of retired and on recall judges, or other qualified experts.
46 The members and employees of the program would be considered
47 State officers and employees for the purposes of the "New Jersey
48 Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.).

1 The Administrative Director of the Courts would also establish
2 procedures for the purpose of efficiently resolving circumstances in
3 which the program is unable to address a dispute over compliance
4 certification within the time limitations established in the bill. As a
5 part of these procedures, in order to facilitate an appropriate level of
6 localized control of affordable housing decisions, for each vicinage,
7 the bill directs the Chief Justice of the Supreme Court to designate a
8 Superior Court judge who sits within the vicinage, or a retired judge
9 who, during his or her tenure as a judge, served within the vicinage,
10 to serve as county level housing judge to resolve disputes over the
11 compliance, of fair share plans and housing elements of
12 municipalities within their county, with the "Fair Housing Act,"
13 when those disputes are not be resolved within the deadlines
14 established in the bill. The Administrative Director of the Courts
15 would adopt and apply a Code of Ethics for the program and county
16 level housing judges modeled on the Code of Judicial Conduct of
17 the American Bar Association, adopted by the State Supreme Court,
18 and may establish additional more restrictive ethical standards in
19 order to meet the specific needs of the program and of county level
20 housing judges.

21 Each municipality's determination of its fair share obligation
22 would be made through the guidance of preliminary calculations
23 made by DCA. No later than August 1 of the year prior to the year
24 when a new round of housing obligations begins, the bill requires
25 DCA to calculate regional need and municipal present and
26 prospective obligations in accordance with formulas established in
27 the bill. DCA's calculations would be made publicly available, and
28 provided to each municipality for use in determining their present
29 and prospective obligations.

30 Municipal fair share obligations would be determined by
31 applying the methods provided in the bill, along with the methods
32 used by the Superior Court for the third round, to the extent that
33 applicable methodologies are not explicitly articulated in the bill.
34 Municipal present need obligations would be determined by
35 estimating the existing deficient housing currently occupied by low-
36 and moderate- income households within the municipality.

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

1 housing need. This household change would be divided by 2.5 to
2 estimate the number of low- and moderate-income homes needed to
3 address population change in the region, thereby determining the
4 regional prospective need for the 10-year round. If household
5 change is zero or negative, the number of low- and moderate-
6 income homes needed to address low- and moderate-income
7 household change in the region and the regional prospective would
8 be zero.

9 After determining regional prospective need, each municipality's
10 fair share prospective obligation of that regional prospective need
11 would be determined. To do this, DCA would first determine
12 whether a municipality is a qualified urban aid municipality, and if
13 so, the municipality would not have a prospective need obligation.

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

35 Finally, the bill would require, where appropriate, adjustments
36 for secondary sources of housing supply and demand by first
37 calculating demolitions of low- and moderate-income housing, and
38 housing creation through residential conversions. To do this, a
39 municipality's share of conversions would be subtracted from the
40 sum of each municipality's allocated share of gross prospective
41 need and demolitions of low- and moderate-income housing. After
42 applying these secondary sources, as appropriate, the municipality's
43 prospective fair share obligation for the 10-year round would be
44 established.

45 A municipality would be permitted to make adjustments for a
46 lack of available land resources as part of the determination of a
47 municipality's fair share of affordable housing when, for example
48 certain municipal lands are devoted for conservation purposes.

1 However, the bill would require a municipality that receives such a
2 vacant land adjustment to its fair share obligation to identify parcels
3 for redevelopment to address at least 25 percent of the prospective
4 need obligation that has been adjusted, and adopt zoning that allows
5 for the adjusted obligation, or demonstrate why this is not possible.

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

11 The bill requires that a municipality is required to satisfy a
12 minimum of 50 percent of the actual affordable housing units,
13 exclusive of any bonus credits, created to address its prospective
14 need affordable housing obligation through the creation of housing
15 available to families with children. The bill amends existing
16 statutory language to ensure that affordable housing is constructed
17 that is accessible to persons with disabilities.

18 The bill permits a municipality to be credited for as much as 10
19 percent of its affordable housing obligation through transitional
20 housing, and defines "transitional housing" as temporary housing,
21 including but not limited to, single room occupancy housing or
22 shared living and supportive living arrangements, that provides
23 access to on-site or off-site supportive services for very low-income
24 households who have recently been homeless or lack stable
25 housing.

26 The bill would establish limitations on the use of municipal
27 affordable housing trust fund moneys for administrative costs,
28 attorney fees, court costs to obtain immunity from a builder's
29 remedy, to contest the municipality's fair share obligation, or use of
30 the trust fund moneys while a municipality does not have immunity
31 from builder's remedy litigation. The bill would authorize a
32 municipality to expend a portion of its affordable housing trust fund
33 on actions and efforts reasonably related to or necessary for certain
34 processes of the program, as provided in the bill. The bill would
35 require each municipality authorized to retain and expend non-
36 residential development fees to periodically provide DCA with an
37 accounting of all such fees that have been collected and expended.

38 The bill would prohibit a municipality from receiving bonus
39 credit for any particular type of low- or moderate-income housing,
40 unless authority to obtain bonus credit is expressly provided by the
41 "Fair Housing Act," as amended and supplemented by the bill. The
42 bill expressly prohibits a municipality from receiving more than one
43 type of bonus credit for any unit, or from satisfying more than 25
44 percent of its prospective need obligation through the use of bonus
45 credits. The bill expressly authorizes bonus credits in the amounts
46 provided in the bill for: (1) housing for individuals with special
47 needs or permanent supportive housing; (2) ownership units created
48 in partnership sponsorship with a non-profit housing developer; (3)

1 housing located in a Garden State Growth Zone or certain transit-
2 oriented locations; (4) certain age-restricted housing units; (5)
3 family housing with at least three bedrooms above the minimum
4 number required by the bedroom distribution in a given
5 development; (6) housing constructed on certain land previously
6 used for retail, office, or commercial space; (7) certain existing
7 rental housing for which affordability controls are extended through
8 municipal contributions; (8) certain 100 percent affordable
9 developments built through municipal contributions of land or
10 funding; and (9) certain housing for very low-income households.
11 The bill also clarifies that all parties would be entitled to rely upon
12 regulations on municipal credits, adjustments, and compliance
13 mechanisms previously adopted by COAH unless those regulations
14 are contradicted by statute, including but not limited to this bill, or
15 binding court decisions.

16 The bill would require DCA to maintain certain affordable
17 housing-related information on its website, including: (1) the start
18 and expiration dates of deed restrictions; (2) residential and non-
19 residential development fees collected and expended, including
20 purposes and amounts of such expenditures; and (3) the current
21 balance in the municipality's affordable housing trust funds. The
22 bill would also direct municipalities to provide the information to
23 DCA necessary to comply with this requirement.

24 The bill would amend various parts of the statutory law to
25 remove references to COAH, and to transfer rulemaking authority,
26 to the extent necessary, from COAH to DCA and the New Jersey
27 Housing and Mortgage Finance Agency (HMFA). The bill directs
28 HMFA to update the Uniform Housing Affordability Controls
29 within nine months following the effective date of the bill. With
30 certain exceptions, for the purpose of affordable rental units, a 40-
31 year minimum deed restriction would be required, and in the case of
32 for-sale units, a 20-year minimum deed restriction would be
33 required.

34 The bill would appropriate \$12 million to the program, and \$4
35 million to DCA, from the General Fund, for the purposes of
36 carrying out their respective responsibilities for the fourth round of
37 affordable housing obligations.

38 The bill would take effect immediately, and would apply to each
39 new round of affordable housing obligations beginning after
40 enactment of the bill.