

# SENATE, No. 1081

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Senator BRITNEE N. TIMBERLAKE**

**District 34 (Essex)**

**SYNOPSIS**

Requires developers of residential housing to provide low, moderate, and middle income housing or pay fee.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning affordable housing and supplementing  
2 P.L.1985, c.222 (C.52:27D-301 et al.).

3

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

6

7 1. a. The developer of a project with 30 or more residential  
8 units that: is approved by a planning board or zoning board of  
9 adjustment; is permissible under either a use variance, a density  
10 variance increasing the permissible density at the site, a rezoning  
11 permitting multiple residential units where not previously  
12 permitted, a new or amended redevelopment plan, or a new or  
13 amended rehabilitation plan; has a net density of six or more units  
14 per acre; and for which an application for a construction permit is  
15 submitted on or after the effective date of P.L. , c. (C. )  
16 (pending before the Legislature as this bill), shall reserve at least:

17 (1) five percent of the residential units for very low income  
18 housing;

19 (2) 10 percent of the residential units for low income housing;

20 (3) five percent of the residential units for moderate income  
21 housing; and

22 (4) five percent of the residential units for middle income  
23 housing.

24 b. A project subject to subsection a. of this section shall be  
25 developed as follows:

26 (1) If more than 25 percent of market rate housing units are  
27 completed, no less than 10 percent of very low, low, moderate, and  
28 middle income housing units shall be completed;

29 (2) If 50 percent or more of the market rate housing units are  
30 completed, no less than 50 percent of very low, low, moderate, and  
31 middle income housing units shall be completed;

32 (3) If 75 percent or more of the market rate housing units are  
33 completed, no less than 75 percent of very low, low, moderate, and  
34 middle income housing units shall be completed;

35 (4) If 90 percent or more of the market rate housing units are  
36 completed, no less than 100 percent of very low, low, moderate, and  
37 middle income housing units shall be completed;

38 The municipality shall withhold a certificate of occupancy for  
39 market rate units, at any stage of development, if the requirements  
40 of this subsection are not satisfied.

41 c. The developer of a project subject to subsection a. of this  
42 section may develop the residential units reserved for very low,  
43 low, moderate, and middle income housing onsite or offsite within  
44 the municipality in which the project is located.

45 d. Any municipal approval or agreement entered into between a  
46 municipality and a developer concerning the development of a  
47 project subject to subsection a. of this section shall incorporate  
48 contractual guarantees and procedures ensuring that any residential

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1 unit reserved for very low, low, moderate, and middle income  
2 housing shall continue to be so reserved for a period of at least 98  
3 years.

4 e. For a project subject to subsection a. of this section that is  
5 not age-restricted, at least 30 percent of all the very low, low,  
6 moderate, and middle income housing units required by this section  
7 shall be two bedroom units and at least 20 percent of all the very  
8 low, low, moderate, and middle income housing units required by  
9 this section shall be three bedroom units.

10 f. (1) A municipality that is authorized to impose and collect  
11 development fees pursuant to section 8 of P.L.2008, c.46  
12 (C.52:27D-329.2), or to impose and collect payments-in-lieu of  
13 constructing affordable units pursuant to section 9 of P.L.2008, c.46  
14 (C.52:27D-329.3), may, in its discretion and in lieu of requiring the  
15 construction of very low, low, moderate, and middle income  
16 housing units pursuant to subsection a. of this section, require a  
17 developer to pay a development fee in an amount equal to 30  
18 percent of the total project cost, as determined by the municipal  
19 engineer or other qualified municipal official designated by  
20 ordinance; provided, however, that the amount of the fee that may  
21 be required under this paragraph shall be 25 percent of the total  
22 project cost if the project achieves a silver rating according to the  
23 Leadership in Energy and Environmental Design Green Building  
24 Rating System as adopted by the United States Green Building  
25 Council.

26 (2) A fee required pursuant to paragraph (1) of this subsection  
27 shall be paid prior to the issuance of a construction permit for the  
28 project.

29 (3) A municipality shall, by ordinance, either:

30 (a) deposit all fees collected pursuant to this subsection into an  
31 affordable housing trust fund and spend those funds on the  
32 development of very low, low, or moderate income housing within  
33 the municipality, pursuant to section 8 of P.L.2008, c.46 (C.52:27D-  
34 329.2); or

35 (b) deposit 50 percent of the fees collected pursuant to this  
36 subsection into an affordable housing trust fund and spend those  
37 funds on the development of very low, low, or moderate income  
38 housing within the municipality, pursuant to section 8 of P.L.2008,  
39 c.46 (C.52:27D-329.2), and deposit the remaining 50 percent of the  
40 fees collected pursuant to this subsection into a community center  
41 trust fund and spend those funds on the development of community  
42 centers.

43 g. Nothing in this section shall be construed to affect the  
44 obligation of a municipality to plan and zone to provide through its  
45 land use regulations a realistic opportunity for a fair share of its  
46 region's present and prospective needs for very low, low, and  
47 moderate income housing. Nothing in this section shall be  
48 construed to alter the obligations of a developer or municipality to

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1 comply with the terms of a court- or agency-approved agreement or  
2 fair share plan, or to prevent a municipality from creating or  
3 enforcing requirements beyond the minimum requirements  
4 established in this section. This section shall not apply to a project  
5 that is identified by block and lot or other specific reference in a  
6 court- or agency-approved agreement or fair share plan.

7 h. The agency shall, on or before the first day of the fourth  
8 month next following the effective date of P.L. , c. (C. )  
9 (pending before the Legislature as this bill) promulgate rules and  
10 regulations, pursuant to the "Administrative Procedure Act,"  
11 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the provisions of  
12 this section.

13 i. As used in this section:

14 "Community center" means any indoor or outdoor buildings,  
15 spaces, structures, or improvements intended for active or passive  
16 recreation, including but not limited to parks, ball fields, meeting  
17 halls, and classrooms, accommodating either organized or informal  
18 activity and oriented towards serving residents of the municipality.

19 "Middle income housing" means housing affordable, according  
20 to federal Department of Housing and Urban Development or other  
21 recognized standards for home ownership and rental costs, and  
22 occupied or reserved for occupancy by households with a gross  
23 household income equal to more than 80 percent but less than 120  
24 percent of the median gross household income for households of the  
25 same size within the housing region in which the housing is located.

26

27 2. This act shall take effect on the first day of the fourth month  
28 next following enactment, except the agency may take any  
29 anticipatory administrative action in advance as shall be necessary  
30 for the implementation of this act.

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**STATEMENT**

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35 This bill would require certain projects with 30 or more residential  
36 units to reserve 25 percent of the units for very low, low, moderate,  
37 and middle income housing. The bill establishes a schedule under  
38 which a developer would be required to complete a certain percentage  
39 of the very low, low, moderate, and middle income housing units upon  
40 the completion of a certain percentage of the market rate housing units.  
41 The municipality would be permitted to withhold the certificate of  
42 occupancy for market rate units, at any stage of development, if the  
43 requirements of this schedule are not satisfied. The developer would  
44 be permitted to develop the residential units reserved for very low,  
45 low, moderate, and middle income housing offsite of the project,  
46 provided that the units are developed within the municipality in which  
47 the project is located. Any residential unit reserved for very low, low,  
48 moderate, and middle income housing would have to continue to be so

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1 reserved for a period of at least 98 years, according to the current  
2 affordability standards. For a project that is not age-restricted, at least  
3 30 percent of all the very low, low, moderate, and middle income  
4 housing units would have to be two bedroom units and at least another  
5 20 percent of these units would have to be three bedroom units.

6 Under the bill a municipality may, instead of requiring the  
7 construction of very low, low, moderate, and middle income housing  
8 units, require a developer to pay a development fee in an amount equal  
9 to 30 percent of the total project cost; provided, however, that the  
10 amount of that fee would be 25 percent of the total project cost if the  
11 project achieves a silver rating according to the Leadership in Energy  
12 and Environmental Design Green Building Rating System as adopted  
13 by the United States Green Building Council. If such a fee is required,  
14 it would have to be paid prior to the issuance of a construction permit  
15 for the project. These fees would have to be placed into an affordable  
16 housing trust fund and spent on the development of very low, low, or  
17 moderate income housing within the municipality. Alternatively, half  
18 of these fees may be placed into an affordable housing trust fund and  
19 spent on the development of very low, low, or moderate income  
20 housing within the municipality, and the remaining half placed into a  
21 community center trust fund and spent on the development of  
22 community centers.

23 Nothing in this bill would affect the obligation of a municipality to  
24 plan and zone to provide through its land use regulations a realistic  
25 opportunity for a fair share of its region's present and prospective  
26 needs for very low, low, and moderate income housing. Additionally,  
27 nothing in this bill would alter the obligations of a developer or  
28 municipality to comply with the terms of a court- or agency-approved  
29 agreement or fair share plan, or to prevent a municipality from creating  
30 or enforcing requirements beyond the minimum requirements  
31 established in this section. Also, the bill would not apply to a project  
32 that is identified by block and lot or other specific reference in a court-  
33 or agency-approved agreement or fair share plan.

34 Lastly, the bill requires the New Jersey Housing and Mortgage  
35 Finance Agency to adopt rules and regulations effectuating the  
36 provisions of the bill on or before the first day of the fourth month next  
37 following the effective date of the bill.