

SENATE, No. 1106

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator BRITNEE N. TIMBERLAKE

District 34 (Essex)

SYNOPSIS

Concerns development and use of accessory dwelling units.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning accessory dwelling units, supplementing
2 P.L.1975, c.291 (C.40:55D-1 et seq.) and P.L.1993, c.30
3 (C.45:22A-43 et seq.), and amending P.L.1985, c.222.
4

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

8 1. (New section) a. The Legislature finds and declares that:

9 (1) Accessory dwelling units are a valuable form of housing and
10 present a way to expand the State's housing supply that is both cost-
11 effective and consistent with sound planning and environmental
12 principles.

13 (2) Accessory dwelling units provide housing for family
14 members, the elderly, in-home health care providers, individuals
15 with disabilities, households of low and moderate income, and
16 others, often at below-market prices within existing neighborhoods.

17 (3) Homeowners who develop accessory dwelling units can
18 benefit from added income and an increased sense of security.

19 (4) Allowing accessory dwelling units in single-family and two-
20 family residential zones will make it possible to expand the state of
21 New Jersey's rental housing stock, and meet current and future
22 housing demand.

23 (5) Accessory dwelling units offer lower-cost housing within
24 existing neighborhoods while maintaining the architectural
25 character of a neighborhood.

26 (6) Accessory dwelling units should therefore be considered an
27 essential component of New Jersey's housing supply.

28 b. It is the intent of the Legislature that municipal land use
29 regulations shall provide for the creation of accessory dwelling
30 units consistent with the provisions of P.L. , c. (C.)
31 (pending before the Legislature as this bill), and that no provision
32 of any such regulation shall restrict the ability of a property owner
33 to develop accessory dwelling units consistent with the provisions
34 of P.L. , c. (C.) (pending before the Legislature as this
35 bill).
36

37 2. (New section) As used in sections 1 through 7 of
38 P.L. , c. (C. through C.) (pending before the Legislature
39 as this bill):

40 "Accessory dwelling unit" means a residential dwelling unit that
41 provides complete independent living facilities for one or more
42 persons, including provisions for living, sleeping, eating, cooking,
43 and sanitation, and is located within a proposed or existing primary
44 dwelling, within an existing or proposed accessory structure,
45 constructed in whole or part as an extension to a proposed or

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.

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1 existing primary dwelling, or constructed as a separate detached
2 structure on the same lot as the existing or proposed primary
3 dwelling.

4 “Accessory structure” means a structure that is accessory and
5 incidental to a dwelling located on the same lot.

6 “Buildable area” means that area within the rear yard of a lot on
7 which a primary dwelling is located that is beyond a five-foot
8 setback line from the side and rear property lines.

9 “Commissioner” means the Commissioner of Community
10 Affairs.

11 “Department” means the Department of Community Affairs.

12 “Primary dwelling” means a single-family or two-family
13 dwelling proposed or existing on a residential lot.

14 “Single-family dwelling” means any structure that contains a
15 single-family dwelling unit on an individual lot, including
16 structures that are attached to other single-family dwellings with a
17 common party wall commonly known as “semi-detached” houses,
18 “row houses” or “townhouses”.

19 “Tandem parking” means parking two or more automobiles on a
20 driveway or another location on a lot, aligned so that one
21 automobile is parked immediately behind the another.

22 “Two-family dwelling” means any structure that contains two
23 separate dwelling units on an individual lot, whether separated
24 horizontally or vertically.

25

26 3. (New section) a. A municipality may adopt or amend
27 existing land use regulations to authorize a person to develop one or
28 more accessory dwelling units on a lot owned by the person, and
29 located within an area meeting the requirements of subsection c. of
30 this section, in a manner consistent with the standards and
31 procedures set forth in P.L. , c. (C.) (pending before the
32 Legislature as this bill).

33 b. A provision of a municipal land use regulation that is in
34 place on the effective date of P.L. , c. (C.) (pending
35 before the Legislature as this bill) but fails to comply with the
36 requirements of P.L. , c. (C.) (pending before the
37 Legislature as this bill) shall be null, void, and unenforceable. A
38 municipality shall follow the requirements of P.L. , c. (C.)
39 (pending before the Legislature as this bill) when considering an
40 application to develop an accessory dwelling unit, unless and until
41 the municipality adopts or amends its land use regulations in a
42 manner consistent with the standards and procedures set forth in
43 P.L. , c. (C.) (pending before the Legislature as this
44 bill).

45 c. Except as otherwise provided in section 5
46 of P.L. , c. (C.) (pending before the Legislature as this bill),
47 land use regulations adopted or amended pursuant to
48 P.L. c. (C.) (pending before the Legislature as this bill) shall

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1 provide that an accessory dwelling unit is a permitted use as of right
2 on a lot if a primary dwelling exists or is being proposed on the lot,
3 and the lot is located within a zone in which a single-family
4 dwelling or a two-family dwelling is permitted under the municipal
5 land use regulations. An accessory dwelling unit shall be deemed
6 to not exceed the allowable density for the lot upon which the
7 accessory dwelling unit is proposed to be located or deemed to be
8 the expansion of a prior nonconforming use.

9 d. The land use regulations shall also provide that:

10 (1) An accessory dwelling unit may be either located within or
11 attached to the proposed or existing primary dwelling or to a
12 proposed or existing garage or other accessory structure, or
13 detached from the proposed or existing primary dwelling but
14 located on the same lot as the proposed or existing primary
15 dwelling. A passageway between the primary dwelling and a
16 detached accessory structure shall not be required.

17 (2) An accessory dwelling unit may be rented separately from
18 the primary dwelling, but shall not be sold or otherwise conveyed
19 separately from the primary dwelling.

20 (3) Land use regulations shall not prohibit an applicant from
21 seeking approval to develop an accessory dwelling unit, either
22 simultaneously with or separately from the development of a
23 primary dwelling.

24

25 4. (New section) a. Municipal land use regulations concerning
26 accessory dwelling units shall comply with the following standards:

27 (1) The minimum floor area requirement, if any, shall be no
28 greater than 300 square feet.

29 (2) The maximum floor area requirement, if any, shall be no
30 smaller than 1,200 square feet, except as otherwise provided in
31 subsection h. of section 5 of P.L. , c. (C.) (pending before
32 the Legislature as this bill).

33 (3) The maximum height requirement, if any, shall be no less
34 than 20 feet.

35 (4) A developer shall not be required to install fire sprinklers in
36 an accessory dwelling unit if there is no requirement to install fire
37 sprinklers in the primary dwelling.

38 (5) (a) There shall be no setback requirements for any accessory
39 dwelling unit that is located within an existing structure or a
40 structure constructed in the same location and to the same
41 dimensions as an existing structure being converted to an accessory
42 dwelling unit;

43 (b) There shall be no more than a five-foot sideyard and
44 rearyard setback requirement for any other accessory dwelling unit.

45 (6) An accessory dwelling unit shall provide direct exterior
46 access separate from the direct exterior access from the primary
47 dwelling.

1 (7) Parking requirements for accessory dwelling units shall not
2 exceed one parking space per accessory dwelling unit, which may
3 be provided as tandem parking.

4 (8) If a garage or other covered parking structure or any parking
5 space within such structure is removed in conjunction with the
6 construction of an accessory dwelling unit or converted to an
7 accessory dwelling unit, the municipality shall not require that those
8 offstreet parking spaces be replaced.

9 b. A provision of a land use regulation that does not comply
10 with the provisions of this section shall be void and shall not be
11 enforced by a municipal agency.

12
13 5. (New section) a. A municipal land use regulation may
14 provide that a municipal agency shall not approve an application to
15 develop an accessory dwelling unit if either:

16 (1) the proposed site is located within an area in which there
17 exists insufficient public sewer or water service, and within which
18 there exists severe constraints on the use of wells and septic tanks,
19 as determined by a competent authority, so to render the addition of
20 a dwelling unit hazardous to the public health; or

21 (2) the proposed site is located on a lot so small that an 800
22 square foot structure cannot be reasonably accommodated without
23 violating the minimum sideyard or rearyard setback requirements of
24 section 4 of P.L. , c. (C.) (pending before the Legislature
25 as this bill).

26 b. A municipal land use regulation may establish reasonable
27 landscaping standards for detached accessory dwelling units.

28 c. A municipal land use regulation may impose architectural
29 review requirements for an application proposing to develop an
30 accessory dwelling unit within an area designated as a historic
31 district by a competent state or local authority, if the proposed
32 development requires either new construction or exterior
33 modification of an existing structure.

34 d. A municipal land use regulation may reduce or eliminate off-
35 street parking requirements imposed upon the development of an
36 accessory dwelling unit otherwise applicable under municipal land
37 use regulation or Statewide site improvement standards adopted
38 pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4).

39 e. A municipal land use regulation may provide that a municipal
40 agency shall not approve an application to develop an accessory
41 dwelling unit on a parcel of property unless the applicant is the
42 owner-occupant of an existing or proposed primary dwelling on the
43 property.

44 f. A municipal land use regulation may provide that an
45 accessory dwelling unit shall not be rented for a period of less than
46 30 days.

47 g. A municipal land use regulation may provide that an
48 accessory dwelling unit is a permitted use in zoning districts in

1 addition to those required pursuant to subsection c. of section 3 of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 including but not limited to multifamily and mixed use districts.

4 h. A municipal land use regulation may limit the maximum size
5 of an accessory dwelling unit constructed separately from the
6 primary dwelling to that square footage that is not in excess of 60
7 percent of the lot's buildable area.

8
9 6. (New section) a. (1) An application to develop an
10 accessory dwelling unit shall be considered and approved as a
11 ministerial action without a public hearing, and without review
12 beyond that necessary to determine compliance with: the provisions
13 of P.L. , c. (C.) (pending before the Legislature as this
14 bill); or, if the municipality has adopted land use regulations
15 consistent with those provisions, the municipality's land use
16 regulations.

17 (2) A municipal agency shall provide an applicant with a
18 decision on an application to develop an accessory dwelling unit on
19 a lot that contains an existing or proposed single-family or two-
20 family dwelling within 60 days of the date the applicant submits a
21 complete application.

22 (3) If an application to develop an accessory dwelling unit is
23 submitted together with an application to develop a new single-
24 family dwelling on the same lot, upon the applicant's request, both
25 applications shall be considered and acted upon by the appropriate
26 approving authority as a single application. An approval of an
27 application to develop an accessory dwelling unit that is submitted
28 together with an application to develop a new single-family
29 dwelling on the same lot shall not impose conditions on approval of
30 the accessory dwelling unit beyond those necessary to comply with
31 the provisions of P.L. , c. (C.) (pending before the
32 Legislature as this bill), or with municipal land use regulations
33 adopted to be consistent with those provisions.

34 (4) Unless an applicant agrees to toll the 60-day time period
35 allowed for a municipal agency to render a decision on an
36 application pursuant to paragraph (2) of this subsection, if the
37 municipal agency does not act upon a complete application within
38 the 60-day time period, the application shall be deemed approved.
39 A municipal agency may charge a reasonable fee to cover the costs
40 associated with reviewing and approving an application to develop
41 an accessory dwelling unit.

42 b. A municipality shall not interpret and apply a provision of
43 any other municipal ordinance, policy, or regulation so to delay or
44 deny approval of an application to develop an accessory dwelling
45 unit.

46 c. A municipality shall not condition approval of an application
47 to develop an accessory dwelling unit upon the correction of a
48 nonconforming zoning condition.

1 d. (1) For an accessory dwelling unit created within an existing
2 primary dwelling, or as an extension onto an existing primary
3 dwelling, the applicant shall not be required to install a new or
4 separate utility connection directly between the accessory dwelling
5 unit and the utility or impose a related connection fee or capacity
6 charge, unless the accessory dwelling unit was constructed together
7 with a new single-family dwelling.

8 (2) For an accessory dwelling unit that is created as a separate
9 structure that is not part of an existing primary dwelling, the
10 applicant may be required to install a new or separate utility
11 connection directly between the accessory dwelling unit and the
12 utility, in which case the connection may be subject to a connection
13 fee or capacity charge that shall be no more than half the fee
14 charged for a new primary dwelling and that shall not exceed the
15 reasonable cost of providing this service.

16 e. Nothing contained in this section shall supersede provisions
17 of the State Uniform Construction Code, promulgated to effectuate
18 the "State Uniform Construction Code Act," P.L.1975, c.217
19 (C.52:27D-119 et seq.), applicable to the construction of an
20 accessory dwelling unit; provided, however, that with respect to an
21 accessory dwelling unit or part thereof being constructed within an
22 existing primary dwelling, the provisions of the Rehabilitation
23 Subcode adopted pursuant to section 5 of P.L.1975, c.217
24 (C.52:27D-123) shall apply.

25 f. A municipality shall not issue a certificate of occupancy for
26 an accessory dwelling unit before the municipality issues a
27 certificate of occupancy for the primary dwelling.

28

29 7. (New section) a. A municipality shall submit land use
30 regulations concerning accessory dwelling units that it adopts
31 pursuant to the provisions of P.L. , c. (C.) (pending
32 before the Legislature as this bill) to the Department of Community
33 Affairs within 60 days of the date of adoption of the regulations.

34 b. The department shall review land use regulations concerning
35 accessory dwelling units that a municipality submits pursuant to
36 subsection a. of this section, and shall notify the municipality,
37 within 60 days of the date the department receives a municipality's
38 land use regulations, of any provision in the regulations that do not
39 comply with the provisions and intent of P.L. , c. (C.)
40 (pending before the Legislature as this bill). If the department does
41 not notify a municipality that a provision of its land use regulations
42 do not comply with the provisions and intent of
43 P.L. , c. (C.) (pending before the Legislature as this bill)
44 within 60 days of the date the department receives a municipality's
45 land use regulations, the regulations shall be deemed approved.

46 c. Within 90 days of the date a municipality receives notice of
47 the department's determination that a provision of the
48 municipality's land use regulations does not comply with the

1 provisions and intent of P.L. , c. (C.) (pending before the
2 Legislature as this bill), the municipality shall either:

3 (1) amend the regulations to conform them with the provisions
4 and intent of P.L. , c. (C.) (pending before the
5 Legislature as this bill); or

6 (2) respond to the departmental notice by setting forth the
7 municipality's reasons why its regulations do not comply with the
8 provisions and intent of P.L. , c. (C.) (pending before the
9 Legislature as this bill), and requesting the department to approve
10 the municipal regulations.

11 d. The department shall review any response from a
12 municipality, giving full consideration to the specific environmental
13 and other conditions affecting that municipality as well as the intent
14 of P.L. , c. (C.) (pending before the Legislature as this
15 bill), and shall notify the municipality either:

16 (1) that the municipality may retain all or some part of its land
17 use regulations; or

18 (2) that the municipality is required to amend provisions of its
19 land use regulations to be consistent with the provisions and intent
20 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).

22 e. Within 60 days of the date of receipt of the department's
23 notice pursuant to paragraph (2) of subsection d. of this section, a
24 municipality shall amend its regulations as may be required by the
25 department pursuant to subsection d. of this section.

26 f. If a municipality does not approve an application to develop
27 an accessory dwelling unit, or imposes conditions on an approval of
28 an application to develop an accessory dwelling unit, the applicant
29 may appeal the decision to the commissioner. If the commissioner
30 determines that the municipality's reasons for withholding approval
31 or imposing conditions are inconsistent with the provisions of
32 P.L. , c. (C.) (pending before the Legislature as this bill),
33 notwithstanding whether the municipal ordinance was approved as a
34 result of inaction by the department as set forth in subsection c. of
35 this section, the commissioner shall approve the application, and
36 shall levy the cost of the proceedings, including the applicant's
37 legal expenses, if any, against the municipality. In the event of a
38 subsequent judicial appeal of the commissioner's decision, the court
39 shall apply the same standard of review as set forth in this
40 subsection for the commissioner's decision on an appeal.

41 g. The department may adopt rules and regulations for the
42 purpose of clarifying or supplementing any of the terms, standards
43 or procedures set forth in P.L. , c. (C.) (pending before
44 the Legislature as this bill).

45

46 8. (New section) a. (1) An association formed for the
47 management of common elements and facilities of a planned real
48 estate development, regardless of whether organized pursuant to

1 section 1 of P.L.1993, c.30 (C.45:22A-43), shall not, after the
2 effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill), adopt or enforce a restriction, covenant,
4 bylaw, rule, regulation, master deed provision, or provision of a
5 governing document prohibiting or unreasonably restricting the
6 development or use of an accessory dwelling unit on a lot zoned for
7 single-family residential use if the proposed accessory dwelling unit
8 is consistent with the requirements of P.L. , c. (C.)
9 (pending before the Legislature as this bill).

10 (2) Any covenant, restriction, or condition contained in a deed,
11 contract, security instrument, or other instrument affecting the
12 transfer or sale of any interest in a planned real estate development,
13 and any provision of a master deed, bylaw, or other governing
14 document that either prohibits or unreasonably restricts the
15 development or use of an accessory dwelling unit on a lot zoned for
16 single-family or two-family residential use, is void and
17 unenforceable if the proposed accessory dwelling unit is consistent
18 with the requirements of P.L. , c. (C.) (pending before
19 the Legislature as this bill).

20 b. An association may impose design or landscaping conditions
21 on the development of an accessory dwelling unit if the conditions:

22 (1) are not in excess of conditions generally imposed within the
23 planned real estate development; and

24 (2) do not unreasonably increase the cost to construct,
25 effectively prohibit the construction of, or extinguish the ability to
26 otherwise construct, an accessory dwelling unit consistent with the
27 provisions of P.L. , c. (C.) (pending before the
28 Legislature as this bill).

29

30 9. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
31 read as follows:

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

33 a. "Council" means the Council on Affordable Housing
34 established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall
35 have primary jurisdiction for the administration of housing
36 obligations in accordance with sound regional planning
37 considerations in this State.

38 b. "Housing region" means a geographic area of not less than
39 two nor more than four contiguous, whole counties which exhibit
40 significant social, economic and income similarities, and which
41 constitute to the greatest extent practicable the primary metropolitan
42 statistical areas as last defined by the United States Census Bureau
43 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

44 c. "Low income housing" means housing affordable according
45 to federal Department of Housing and Urban Development or other
46 recognized standards for home ownership and rental costs and
47 occupied or reserved for occupancy by households with a gross
48 household income equal to 50 percent or less of the median gross

- 1 household income for households of the same size within the
2 housing region in which the housing is located.
- 3 d. "Moderate income housing" means housing affordable
4 according to federal Department of Housing and Urban
5 Development or other recognized standards for home ownership
6 and rental costs and occupied or reserved for occupancy by
7 households with a gross household income equal to more than 50%
8 but less than 80 percent of the median gross household income for
9 households of the same size within the housing region in which the
10 housing is located.
- 11 e. "Resolution of participation" means a resolution adopted by
12 a municipality in which the municipality chooses to prepare a fair
13 share plan and housing element in accordance with P.L.1985, c.222
14 (C.52:27D-301 et al.).
- 15 f. "Inclusionary development" means a residential housing
16 development in which a substantial percentage of the housing units
17 are provided for a reasonable income range of low and moderate
18 income households.
- 19 g. "Conversion" means the conversion of existing commercial,
20 industrial, or residential structures for low and moderate income
21 housing purposes where a substantial percentage of the housing
22 units are provided for a reasonable income range of low and
23 moderate income households.
- 24 h. "Development" means any development for which
25 permission may be required pursuant to the "Municipal Land Use
26 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 27 i. "Agency" means the New Jersey Housing and Mortgage
28 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
29 seq.).
- 30 j. "Prospective need" means a projection of housing needs
31 based on development and growth which is reasonably likely to
32 occur in a region or a municipality, as the case may be, as a result
33 of actual determination of public and private entities. In
34 determining prospective need, consideration shall be given to
35 approvals of development applications, real property transfers, and
36 economic projections prepared by the State Planning Commission
37 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
38 196 et seq.).
- 39 k. "Person with a disability" means a person with a physical
40 disability, infirmity, malformation, or disfigurement which is
41 caused by bodily injury, birth defect, aging, or illness including
42 epilepsy and other seizure disorders, and which shall include, but
43 not be limited to, any degree of paralysis, amputation, lack of
44 physical coordination, blindness or visual impairment, deafness or
45 hearing impairment, the inability to speak or a speech impairment,
46 or physical reliance on a service animal, wheelchair, or other
47 remedial appliance or device.

1 l. "Adaptable" means constructed in compliance with the
2 technical design standards of the barrier free subcode adopted by
3 the Commissioner of Community Affairs pursuant to the "State
4 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
5 et seq.) and in accordance with the provisions of section 5 of
6 P.L.2005, c.350 (C.52:27D-123.15).

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

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

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

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

27 11. a. In adopting its housing element, the municipality may
28 provide for its fair share of low and moderate income housing by
29 means of any technique or combination of techniques which provide
30 a realistic opportunity for the provision of the fair share. The
31 housing element shall contain an analysis demonstrating that it will
32 provide such a realistic opportunity, and the municipality shall
33 establish that its land use and other relevant ordinances have been
34 revised to incorporate the provisions for low and moderate income
35 housing. In preparing the housing element, the municipality shall
36 consider the following techniques for providing low and moderate
37 income housing within the municipality, as well as such other
38 techniques as may be published by the council or proposed by the
39 municipality:

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

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

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

1 g. A municipality which has received substantive certification
2 from the council, and which has actually effected the construction
3 of the affordable housing units it is obligated to provide, may
4 amend its affordable housing element or zoning ordinances without
5 the approval of the council.

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

11 i. The council, upon the application of a municipality and a
12 developer, may approve reduced affordable housing set-asides or
13 increased densities to ensure the economic feasibility of an
14 inclusionary development.

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

40 k. A municipality's housing element shall include a plan to
41 promote the creation of accessory dwelling units that will be offered
42 at affordable rent for low and moderate income households.

43 (cf: P.L.2013, c.6, s.1)
44

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

47 20. There is established in the Department of Community
48 Affairs a separate trust fund, to be used for the exclusive purposes

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

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

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

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

45 b. The commissioner shall establish rules and regulations
46 governing the qualifications of applicants, the application
47 procedures, and the criteria for awarding grants and loans and the

1 standards for establishing the amount, terms, and conditions of each
2 grant or loan.

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

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

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

17 (2) Creation of accessory **[apartments]** dwelling units to be
18 occupied by low and moderate income households;

19 (3) Conversion of non-residential space to residential purposes;
20 provided a substantial percentage of the resulting housing units are
21 to be occupied by low and moderate 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 households, or any combination thereof;

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

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

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

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

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

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

37 h. The department and the State Treasurer shall submit the
38 "New Jersey Affordable Housing Trust Fund" for an audit annually
39 by the State Auditor or State Comptroller, at the discretion of the
40 Treasurer. In addition, the department shall prepare an annual
41 report for each fiscal year, and submit it by November 30th of each
42 year to the Governor and the Legislature, and the Joint Committee
43 on Housing Affordability, or its successor, and post the information
44 to its web site, of all activity of the fund, including details of the
45 grants and loans by number of units, number and income ranges of
46 recipients of grants or loans, location of the housing renovated or
47 constructed using monies from the fund, the number of units upon
48 which affordability controls were placed, and the length of those

1 controls. The report also shall include details pertaining to those
2 monies allocated from the fund for use by the State rental assistance
3 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
4 and subsection g. of this section.

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

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

11
12 12. This act shall take effect immediately.

13 14 15 STATEMENT

16
17 This bill would authorize owners of property zoned for single-
18 family or two-family residential use to develop an accessory
19 dwelling unit (ADU) on their property consistent with Statewide
20 standards for the development of ADUs. The bill would permit
21 each municipality to adopt or amend its land use regulations to be
22 consistent with the bill's Statewide standards.

23 Under the bill, a municipality may authorize a person to develop
24 one or more ADUs on a lot owned by the person and located within
25 a zone in which a single- or two-family dwelling is permitted under
26 the municipal land use regulations. While allowing a municipality
27 to impose some exceptions in adopting its land use regulations
28 regarding the development of ADUs, the bill would require
29 municipal land use regulations to provide that an ADU is a
30 permitted use as of right on a lot if a primary dwelling exists or is
31 being proposed on the lot, and the lot is located within a zone in
32 which a single-family dwelling or a two-family dwelling is
33 permitted under the municipal land use regulations.

34 The bill defines ADU as a residential dwelling unit that provides
35 complete independent living facilities for one or more persons, and
36 is either: located within a proposed or existing primary dwelling;
37 located within a proposed or existing accessory structure;
38 constructed in whole or part as an extension to a proposed or
39 existing primary dwelling; or constructed as a separate detached
40 structure on the same lot as the existing or proposed primary
41 dwelling.

42 The bill would require a municipality's land use regulations to
43 provide that:

- 44 • an ADU may be either located within or attached to the
45 proposed or existing primary dwelling or to a proposed or
46 existing garage or other accessory structure, or detached
47 from the proposed or existing primary dwelling but located
48 on the same lot as the proposed or existing primary dwelling.

- 1 A municipality would be prohibited from requiring
2 installation of a passageway between a primary dwelling and
3 a detached accessory structure;
- 4 • an ADU may be rented separately from the primary
5 dwelling, but is prohibited from being sold or otherwise
6 conveyed separately from the primary dwelling; and
 - 7 • a municipality is prohibited from requiring an applicant to
8 seek approval to develop an ADU, either simultaneously
9 with or separately from the development of a primary
10 dwelling.

11 The bill would require municipal land use regulations concerning
12 ADUs to comply with the following standards:

- 13 • a minimum floor area requirement of no greater than 300
14 square feet;
- 15 • a maximum floor area requirement of no smaller than 1,200
16 square feet;
- 17 • a maximum height requirement of no less than 20 feet;
- 18 • no requirement to install fire sprinklers in an ADU if there is
19 no requirement to install fire sprinklers in the primary
20 dwelling;
- 21 • no setback requirements for an ADU that is located within
22 an existing structure or a structure constructed in the same
23 location and to the same dimensions as an existing structure
24 being converted to an ADU;
- 25 • no more than a five-foot sideyard and rearyard setback
26 requirement for any other ADU;
- 27 • an ADU must provide direct exterior access separate from
28 the direct exterior access from the primary dwelling;
- 29 • no parking requirement for an ADU in excess of one parking
30 space per ADU, which may be provided as tandem parking;
31 and
- 32 • no requirement to replace an offstreet parking space being
33 removed in conjunction with the construction of, or
34 conversion to, an ADU.

35 If a municipality's land use regulations do not comply with the
36 above requirements, the regulations would be void and
37 unenforceable.

38 The bill sets forth the following specific circumstances under
39 which a municipal agency may deny an application to develop an
40 ADU:

- 41 • the proposed site is located within an area in which there
42 exists insufficient public sewer or water service, and within
43 which there exists severe constraints on the use of wells and
44 septic tanks, which render the addition of a dwelling unit
45 hazardous to the public health; or
- 46 • the proposed site is located on a lot so small that an 800
47 square foot structure cannot be reasonably accommodated

1 without violating the bill's minimum sideyard or rearyard
2 setback requirements.

3 The bill would allow a municipality's land use regulations to:

- 4 • establish reasonable landscaping standards for detached
5 ADUs;
- 6 • impose architectural review requirements for an application
7 proposing to develop an ADU within an area designated as a
8 historic district, if the proposed development requires either
9 new construction or exterior modification of an existing
10 structure;
- 11 • reduce or eliminate off-street parking requirements imposed
12 upon the development of an ADU otherwise applicable
13 under municipal land use regulation or Statewide site
14 improvement standards;
- 15 • provide that a municipal agency shall not approve an
16 application to develop an ADU on a parcel of property
17 unless the applicant is the owner-occupant of an existing or
18 proposed primary dwelling on the property;
- 19 • provide that an ADU is prohibited from being rented for a
20 period of less than 30 days;
- 21 • provide that an ADU is a permitted use in additional zoning
22 districts; and
- 23 • limit the maximum size of an ADU constructed separately
24 from the primary dwelling to that square footage that is not
25 in excess of 60 percent of the lot's buildable area, as
26 defined in the bill.

27 The bill provides that an application to develop an ADU is to be
28 considered and approved ministerially, without public hearing, and
29 without review beyond that necessary to determine compliance with
30 the provisions of the bill or municipal land use regulations adopted
31 consistent with the bill. The bill would allow a municipal agency to
32 charge a reasonable fee to cover the costs associated with reviewing
33 and approving an application to develop an accessory dwelling unit.

34 The bill requires a municipal agency to provide an applicant with
35 its decision on an application to develop an ADU within 60 days of
36 the date the applicant submits a complete application. Unless the
37 applicant agrees to toll this 60-day time period, if the municipal
38 agency does not act upon the application within the 60-day time
39 period, the application is to be deemed approved.

40 If an application to develop an ADU is submitted together with
41 an application to develop a new single-family dwelling on the same
42 lot, upon the applicant's request, the appropriate municipal agency
43 is to consider and act upon both applications as a single application.
44 The bill would prohibit a municipal agency from imposing
45 conditions, beyond those necessary to comply with the provisions
46 of the bill, upon the approval of an application to develop an ADU,
47 if the application is submitted together with an application to
48 develop a new single-family dwelling on the same lot.

- 1 Additionally, the bill would prohibit a municipality from:
- 2 • interpreting and applying a provision of any other municipal
- 3 ordinance, policy, or regulation so to delay or deny approval
- 4 of an application to develop an ADU.
- 5 • conditioning approval of an application to develop an ADU
- 6 upon the correction of a nonconforming zoning condition.
- 7 • requiring, for an application to develop an ADU within an
- 8 existing primary dwelling or as an extension onto an existing
- 9 primary dwelling, the installation of a new or separate utility
- 10 connection directly between the ADU and the utility, or
- 11 imposition of a related connection fee or capacity charge,
- 12 unless the ADU is being constructed together with a new
- 13 single-family dwelling.
- 14 If an application is submitted to develop an ADU as a separate
- 15 structure, not part of an existing primary dwelling, a municipal
- 16 agency may require the applicant to install a new or separate utility
- 17 connection directly between the ADU and the utility, subject to a
- 18 connection fee or capacity charge of no more than half the fee
- 19 charged for a new primary dwelling, which fee shall not exceed the
- 20 reasonable cost of providing this service.
- 21 The bill would not supersede provisions of the State Uniform
- 22 Construction Code applicable to the construction of ADUs,
- 23 however, the bill specifies that the provisions of the Rehabilitation
- 24 Subcode of the State Uniform Construction Code is to apply to the
- 25 construction of an ADU within an existing primary dwelling.
- 26 Additionally, the bill would prohibit issuance of a certificate of
- 27 occupancy for an ADU under the State Uniform Construction Code
- 28 prior to issuance of a certificate of occupancy for the primary
- 29 dwelling.
- 30 The bill would require a municipality to submit land use
- 31 regulations it adopts concerning ADUs to the Department of
- 32 Community Affairs within 60 days of the date of adoption of the
- 33 municipal land use regulations. The department would review the
- 34 municipal land use regulations concerning ADUs and notify the
- 35 municipality within 60 days of the date the department receives a
- 36 municipality's regulations of any provision in the regulations that
- 37 does not comply with the bill's provisions. Under the bill, if the
- 38 department does not notify a municipality, within 60 days of the
- 39 date the department receives a municipality's land use regulations
- 40 concerning ADUs, that a provision of the municipal land use
- 41 regulations does not comply with the bill's provisions, the
- 42 regulations are to be deemed approved.
- 43 Within 90 days of the date a municipality receives notice of the
- 44 department's determination that a provision of the municipality's
- 45 land use regulations does not comply with the provisions of this
- 46 bill, the municipality shall either:
- 47 amend its regulations to conform them with the provisions and
- 48 intent of the bill; or

1 respond to the department by: asking it to approve the municipal
2 regulations, and explaining the municipality's reasons why its
3 regulations do not comply with the provisions and intent of this bill.

4 In the case of the latter, the department would review the
5 municipality's response, consider the specific conditions affecting
6 that municipality, as well as the intent of this bill, and notify the
7 municipality either:

8 that the municipality may retain all or some part of its land use
9 regulations; or

10 that the municipality is required to amend provisions of its land
11 use regulations to be consistent with the provisions and intent of the
12 bill.

13 Within 60 days of the date of receipt of the department's notice
14 requiring it to amend its land use regulations to be consistent with
15 the provisions and intent of the bill, the municipality is required to
16 amend its regulations.

17 If a municipality does not approve an application to develop an
18 ADU, or imposes conditions on an approval of an application to
19 develop an ADU, the applicant may appeal the decision to the
20 Commissioner of Community Affairs. If the commissioner
21 determines that the municipality's reasons for withholding approval
22 or imposing conditions are inconsistent with the bill's provisions,
23 the commissioner is required to approve the application, and levy
24 the cost of the proceedings, including the applicant's legal
25 expenses, if any, against the municipality.

26 The bill also amends the law governing associations formed for
27 the management of common elements and facilities of a planned
28 real estate development to prohibit the adoption or enforcement of
29 a restriction, covenant, bylaw, rule, regulation, master deed
30 provision, or governing document provision that prohibits or
31 unreasonably restricts the development or use of an ADU on a lot
32 zoned for single-family residential use if the proposed ADU is
33 consistent with the bill's requirements. Under the bill, any
34 provisions of a planned real estate development's governing
35 documents that either prohibit or unreasonably restrict the
36 development or use of an ADU on a lot zoned for single-family or
37 two-family residential use is void and unenforceable if the proposed
38 ADU is consistent with the requirements of the bill. However, the
39 bill specifically authorizes an association to impose design or
40 landscaping conditions on the development of an ADU if the
41 conditions: are not in excess of conditions generally imposed within
42 the planned real estate development; do not unreasonably increase
43 the cost to construct, effectively prohibit the construction of, or
44 extinguish the ability to otherwise construct, an ADU consistent
45 with the provisions of the bill.

46 The bill would also amend the "Fair Housing Act,"
47 N.J.S.A.52:27D-301 et al., to require a municipality's master plan
48 housing element to include a plan to promote the creation of ADUs

S1106 TIMBERLAKE

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1 that will be offered at affordable rent for low- and moderate-income
2 households, and to clarify that amounts deposited in the "New
3 Jersey Affordable Housing Trust Fund" may be applied for the
4 purpose of creating ADUs to be occupied by low- and moderate-
5 income households.