

SENATE, No. 3453

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 17, 2024

Sponsored by:

Senator ANTHONY M. BUCCO

District 25 (Morris and Passaic)

SYNOPSIS

Provides for preservation bonus credit against affordable housing obligations to certain municipalities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing for preservation bonus credits against affordable
2 housing obligations to certain municipalities and amending
3 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. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
9 read as follows:

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

23 (1) Rezoning for densities necessary to assure the economic
24 viability of any inclusionary developments, either through
25 mandatory set-asides or density bonuses, as may be necessary to
26 meet all or part of the municipality's fair share in accordance with
27 the provisions of subsection h. of this section;

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

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

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

41 (5) Donation or use of municipally owned land or land
42 condemned by the municipality for purposes of providing low- and
43 moderate-income housing;

44 (6) Tax abatements for purposes of providing low- and
45 moderate-income housing;

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 (7) Utilization of funds obtained from any State or federal
2 subsidy toward the construction of low- and moderate-income
3 housing;

4 (8) Utilization of municipally generated funds toward the
5 construction of low- and moderate-income housing; and

6 (9) The purchase of privately owned real property used for
7 residential purposes at the value of all liens secured by the property,
8 excluding any tax liens, notwithstanding that the total amount of
9 debt secured by liens exceeds the appraised value of the property,
10 pursuant to regulations promulgated by the Commissioner of
11 Community Affairs pursuant to subsection b. of section 41 of
12 P.L.2000, c.126 (C.52:27D-311.2).

13 b. The municipality may provide for a phasing schedule for the
14 achievement of its fair share of low- and moderate-income housing.

15 c. (Deleted by amendment, P.L.2008, c.46)

16 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
17 require a municipality to raise or expend municipal revenues in
18 order to provide low- and moderate-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, and for which
25 adequate measures to retain such affordability pursuant to
26 paragraph (3) of subsection a. of this section are included in the
27 housing element, those housing units shall be fully credited towards
28 the fulfillment of the municipality's fair share of low- and
29 moderate-income housing. A municipality shall not credit
30 transitional housing units towards more than 10 percent of the
31 municipality's fair share obligation.

32 f. It having been determined by the Legislature that the
33 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
34 a public purpose, a municipality or municipalities may utilize public
35 monies to make donations, grants or loans of public funds for the
36 rehabilitation of deficient housing units and the provision of new or
37 substantially rehabilitated housing for low- and moderate-income
38 persons, providing that any private advantage is incidental.

39 g. A municipality that has received approval of its housing
40 element and fair share plan for the current round, and that has
41 actually effected the construction of the affordable housing units it
42 is obligated to provide, may amend its affordable housing element
43 or zoning ordinances without losing immunity from exclusionary
44 zoning litigation.

45 h. Whenever affordable housing units are proposed to be
46 provided through an inclusionary development, a municipality shall
47 provide, through its zoning powers, incentives to the developer,
48 which shall include increased densities and reduced costs.

1 i. A municipality and a developer may request a modification
2 of a compliance certification involving reduced affordable housing
3 set-asides or increased densities to ensure the economic feasibility
4 of an inclusionary development, if any such application
5 demonstrates how any shortfall in meeting the municipal fair share
6 obligation will then be addressed. Such a request may be granted
7 only if the municipality and developer have demonstrated that the
8 project has been impacted by market conditions beyond their
9 reasonable control.

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

35 k. In the fourth round, and in subsequent rounds of affordable
36 housing obligations, a municipality shall be able to receive one
37 credit against its affordable housing obligation for each unit of low-
38 or moderate-income housing, and shall not receive bonus credit for
39 any particular type of low- or moderate-income housing, unless
40 authority to obtain bonus credit is expressly provided pursuant to
41 this section, or other sections of the "Fair Housing Act," P.L.1985,
42 c.222 (C.52:27D-301 et al.). A municipality shall not receive more
43 than one type of bonus credit for any unit, and a municipality shall
44 not be permitted to satisfy more than 25 percent of its prospective
45 need obligation in the fourth round or any subsequent round
46 through the use of bonus credits. This subsection shall not be
47 construed to limit the ability of a municipality to receive a unit of
48 credit for a low- or moderate-income housing unit that is subject to

1 affordability controls that are scheduled to expire, but are extended
2 pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321), to the
3 extent that this affordability control extension would otherwise
4 generate this credit. As a part of a fair share plan and housing
5 element adopted pursuant to subsection f. of section 3 of P.L.2024,
6 c.2 (C.52:27D-304.1), a municipality shall:

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

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

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

26 (4) receive one unit of credit and one-half bonus credit for a unit
27 of age-restricted housing, provided that a bonus credit for age-
28 restricted housing shall not be applied to more than 10 percent of
29 the units of age-restricted housing constructed in compliance with
30 the Uniform Housing Affordability Controls promulgated by the
31 New Jersey Housing and Mortgage Finance Agency in a
32 municipality that count towards the municipality's affordable
33 housing obligation for any single 10-year round of affordable
34 housing obligations;

35 (5) receive one unit of credit and one-half bonus credit for each
36 unit of low- or moderate-income family housing with at least three
37 bedrooms above the minimum number required by the bedroom
38 distribution. This bonus credit shall be calculated by taking into
39 account the full municipal fair share plan and housing element, and
40 the number of units with at least three bedrooms required for
41 projects satisfying the minimum 50 percent family housing
42 requirements. A municipality shall receive the bonus credit
43 pursuant to this paragraph for each unit with at least three bedrooms
44 that are above the minimum number required for the bedroom
45 distribution determined pursuant to the Uniform Housing
46 Affordability Controls promulgated by the New Jersey Housing and
47 Mortgage Finance Agency;

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 bonus credit for each unit
13 of low- or moderate-income housing in a 100 percent affordable
14 housing project for which the municipality contributes toward the
15 costs of the project. This contribution may consist of: (a) real
16 property donations that enable siting and construction of the
17 project; or (b) contributions from the municipal affordable housing
18 trust fund in support of the project, if the contribution consists of no
19 less than three percent of the project cost;

20 (9) receive one unit of credit and one-half bonus credit for each
21 unit of very low-income housing for families above the 13 percent
22 of units required to be reserved for very low-income housing
23 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). In
24 accordance with section 7 of P.L.2008, c.46 (C.52:27D-329.1), a
25 municipality shall not be required to provide that a specific
26 percentage of the units in any specific project be reserved as very
27 low-income housing in order to obtain this bonus credit, and the 13
28 percent level, for the purpose of bonus credits, shall be calculated
29 against the full prospective need obligation provided pursuant to the
30 fair share plan; **[and]**

31 (10) receive one unit of credit and one bonus credit for each unit
32 of low- or moderate-income housing created by transforming an
33 existing rental or ownership unit from a market rate unit to an
34 affordable housing unit. A municipality may only rely on this
35 bonus credit as part of its fair share plan and housing element if the
36 municipality demonstrates that a commitment to follow through
37 with this market to affordable agreement has been made and: (a)
38 this agreement has been signed by the property owner; or (b) the
39 municipality has obtained ownership of the property; and

40 (11) receive preservation bonus credits based on formulas
41 developed by the department, in consultation with the Department
42 of Environmental Protection, if the municipality or municipality's
43 boundaries have been determined by the department, in consultation
44 with the Department of Environmental Protection, to contain or
45 sustain:

46 (a) critical headwaters that are designated as a primary source of
47 drinking water for a population of at least 1,000,000 according to
48 the most recent federal decennial census, and the municipality has

1 enacted regulations and committed to enforcement mechanisms to
2 safeguard the drinking water quality of the critical headwaters. The
3 formula developed pursuant to this subparagraph shall, at a
4 minimum, establish classifications of different local watershed
5 factors, regulatory structures, and enforcement mechanisms to
6 provide increased preservation bonus credits to municipalities that
7 more effectively safeguard the drinking water quality and ensure the
8 long-term viability and sustainability of the critical headwaters;

9 (b) other water resources, including rivers, streams, tributaries,
10 lakes, reservoirs, aquifers, estuaries, vernal pools, or connected
11 woodland corridors and the municipality has enacted regulations
12 and committed to enforcement mechanisms to safeguard the water
13 resources and the role that the unique resource plays within its
14 broader ecosystem. The formula developed pursuant to this
15 subparagraph shall, at a minimum, establish classifications of
16 different water resource-specific factors, regulatory structures, and
17 enforcement mechanisms to provide increased preservation bonus
18 credits to municipalities that more effectively safeguard the water
19 resource;

20 (c) land conservation resources, including parks, nature
21 reserves, conservation easements, and farmland or other low-
22 density land use areas to safeguard natural habitats and biodiversity
23 within the resource's broader ecosystem. The formula developed
24 pursuant to this subparagraph shall, at a minimum, establish
25 classifications of different land conservation resource factors,
26 regulatory structures, and enforcement mechanisms to provide
27 increased preservation bonus credits to municipalities that more
28 effectively safeguard the land conservation resources;

29 (d) wildlife or habitat resources, including areas identified to
30 include unique natural habitats and biodiversity within the
31 resource's broader ecosystem, with additional bonus credits
32 provided to municipalities that more effectively protect endangered
33 and threatened species. The formula developed pursuant to this
34 subparagraph shall, at a minimum, establish classifications of
35 different wildlife and habitat resource factors, regulatory structures,
36 and enforcement mechanisms to provide increased preservation
37 bonus credits to municipalities that more effectively safeguard the
38 wildlife and habitat resources;

39 (e) climate resilience resources, including areas identified that
40 help to protect people, property, and other resources from sea-level
41 rise, extreme weather events, and temperature changes. The
42 formula developed pursuant to this subparagraph shall, at a
43 minimum, establish classifications of different climate resilience
44 resource factors, regulatory structures, and enforcement
45 mechanisms to provide increased preservation bonus credits to
46 municipalities that more effectively mitigate climate-related risks;

47 (f) historical or cultural resources, including areas identified that
48 preserve significant cultural and historical landmarks or protected

1 archaeological sites. The formula developed pursuant to this
2 subparagraph shall, at a minimum, establish classifications of
3 different historical and cultural resource factors, regulatory
4 structures, and enforcement mechanisms to provide increased
5 preservation bonus credits to municipalities that more effectively
6 safeguard the most important historical and cultural resources;

7 (g) community engagement or education resources, including
8 areas or programs identified as playing significant roles in engaging
9 residents through educational initiatives, workshops, and
10 community events to raise awareness about environmental issues
11 and promote sustainable practices or engage citizen participation in
12 environmental monitoring and data collection efforts to enhance
13 understanding and stewardship of local ecosystems. The formula
14 developed pursuant to this subparagraph shall, at a minimum,
15 establish classifications of different community engagement and
16 education resource factors, regulatory structures, and enforcement
17 mechanisms to provide increased preservation bonus credits to
18 municipalities that more effectively use or employ community
19 engagement and education resources to engage their communities;
20 or

21 (h) sustainable building practice resources, that incentivize the
22 design, construction, and operation of buildings in manners that
23 reduce their environmental impact while enhancing the health and
24 well-being of their occupants, including improving energy
25 efficiency, conserving water, utilizing sustainable materials,
26 creating healthier indoor environments, siting a building
27 sustainably, and reducing waste. The formula developed pursuant
28 to this subparagraph shall, at a minimum, establish classifications of
29 different sustainable building practice factors, structures that
30 incentivize implementation of such practices, and mechanisms to
31 evaluate implementation of the practices to provide increased
32 preservation bonus credits to municipalities that more effectively
33 incentivize sustainable building practices.

34 The factors for the formulas developed pursuant to this
35 paragraph shall, as applicable, incorporate evaluations of the
36 ecological importance, the habitat diversity and biodiversity, the
37 rarity or uniqueness, and the broader societal, cultural, recreational,
38 educational, and aesthetic value of an individual resource.

39 1. A municipality may not satisfy more than 30 percent of the
40 affordable housing units, exclusive of any bonus credits, to address
41 its prospective need affordable housing obligation through the
42 creation of age-restricted housing. A municipality shall satisfy a
43 minimum of 50 percent of the actual affordable housing units,
44 exclusive of any bonus credits, created to address its prospective
45 need affordable housing obligation through the creation of housing
46 available to families with children and otherwise in compliance
47 with the requirements and controls established pursuant to section
48 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy

1 a minimum of 25 percent of the actual affordable housing units,
2 exclusive of any bonus credits, to address its prospective need
3 affordable housing obligation, through rental housing, including at
4 least half of that number available to families with children. All
5 units referred to in this section shall otherwise be in compliance
6 with the requirements and controls established pursuant to section
7 21 of P.L.1985, c.222 (C.52:27D-321).

8 m. All parties shall be entitled to rely upon regulations on
9 municipal credits, adjustments, and compliance mechanisms
10 adopted by the Council on Affordable Housing unless those
11 regulations are contradicted by statute, including but not limited to
12 P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.

13 n. P.L.2024, c.2 (C.52:27D-304.1 et al.) shall not be construed
14 to require a municipality to fund infrastructure improvements for
15 affordable housing projects beyond any commitments made in a fair
16 share plan and housing element that has been provided with
17 compliance certification. A municipality may fund infrastructure
18 improvements for affordable housing projects, through the adoption
19 of a development agreement with the applicant, beyond any
20 commitments made in a fair share plan and housing element that
21 has been provided with compliance certification.

22 (cf: P.L.2024, c.2, s.24)

23

24 2. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill provides preservation bonus credits against affordable
30 housing obligations to certain municipalities.

31 Under the bill, the Department of Community Affairs (DCA), in
32 consultation with the Department of Environmental Protection
33 (DEP) is required to designate: (1) the location of critical
34 headwaters drinking water resources, (2) other water resources, (3)
35 land conservation resources, (4) wildlife and habitat resources, (5)
36 climate resilience resources, (6) historical and cultural resources,
37 (7) community engagement and education resources, and (8)
38 sustainable building practice resources.

39 Under the bill, a municipality with boundaries that contain, or a
40 municipality that sustains, such resources and that enacts
41 regulations and commits to enforcement mechanisms to safeguard
42 the resources would receive preservation bonus credits towards its
43 affordable housing requirement based on formulas developed by
44 DCA, in consultation with DEP. The formulas developed would
45 each include different factors, as specified in the bill.

46 The bill requires that formula factors incorporate, as applicable,
47 evaluations of the ecological importance, the habitat diversity and
48 biodiversity, the rarity or uniqueness, and the broader societal,

1 cultural, recreational, educational, and aesthetic value of individual
2 resources.

3 The preservation bonus credits received by a municipality, as
4 established by the bill, are to count against the 25 percent cap,
5 under current law, on the use of bonus credits that can be applicable
6 to the municipality's prospective need obligation in the fourth
7 round or any subsequent round.