

ASSEMBLY, No. 4764

STATE OF NEW JERSEY

222nd LEGISLATURE

INTRODUCED MARCH 19, 2026

Sponsored by:

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Assemblywoman VICTORIA A. FLYNN

District 13 (Monmouth)

Co-Sponsored by:

Assemblyman Scharfenberger

SYNOPSIS

Excludes flood-prone land from affordable housing vacant land analysis;
provides housing obligation cap.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/24/2026)

1 AN ACT concerning affordable housing, including prospective need
2 obligation caps and vacant land analysis to non-redevelopment
3 housing projects, and amending P.L.1995, c.231 and P.L.2024,
4 c.2.

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

8
9 1. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
10 read as follows:

11 1. Any municipality that receives an adjustment of its
12 prospective need obligations for the fourth round or subsequent
13 rounds based on a lack of vacant land shall, as part of the process of
14 adopting and implementing its housing element and fair share plan,
15 identify sufficient parcels likely to redevelop during the current
16 round of obligations to address at least 25 percent of the prospective
17 need obligation that has been adjusted and adopt realistic zoning
18 that allows for such adjusted obligation, or demonstrate why the
19 municipality is unable to do so. When computing a municipal
20 adjustment regarding available land resources as part of the
21 determination of a municipality's fair share of affordable housing,
22 the municipality, in filing a housing element and fair share plan
23 pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-
24 304.1), shall exclude from designating, and the process set forth
25 pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) and section
26 13 of P.L.1985, c.222 (C.52:27D-313) shall confirm was correctly
27 excluded, as vacant land:

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

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

43 (c) any vacant contiguous parcels of land in private ownership
44 of a size which would accommodate fewer than five housing units
45 based on appropriate standards pertaining to housing density;

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.

(d) historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the date of filing a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or initiation of an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313);

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

(f) sites designated for active recreation that are designated for recreational purposes in the municipal master plan; **[and]**

(g) environmentally sensitive lands where development is prohibited by any State or federal agency, including, but not limited to, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities; and

(h) any land that is: (1) lower than the most recent flood elevation determination, measured pursuant to federal standards, (2) lower than the applicable flood elevation standard required under regulations adopted pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or (3) within 100 feet of category one waters designated by the Department of Environmental Protection, pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), or any other law, or any rule or regulation adopted pursuant thereto.

No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.

No municipality shall be required to authorize construction of a non-redevelopment housing project on undeveloped land.

(cf: P.L.2024, c.2, s.23)

2. Section 3 of P.L.2024, c.2 (C.52:27D-304.1) is amended to read as follows:

3. a. The Council on Affordable Housing, established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), is abolished. Each municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and may take into consideration the calculations in the report published by the department in accordance with this section.

b. Following the expiration of the third round of affordable housing obligations on July 1, 2025, a municipality shall have immunity from exclusionary zoning litigation if the municipality complies with the deadlines established in P.L.2024, c.2 (C.52:27D-304.1 et al.) for both determining present and prospective

1 obligations and for adopting a housing element and fair share plan
2 to meet those obligations.

3 (1) Immunity from exclusionary zoning litigation shall not limit
4 the ability of an interested party to challenge a municipality for
5 failure to comply with the terms of its compliance certification.
6 However, a municipality's actions to comply with the terms of its
7 compliance certification shall retain a presumption of validity if
8 challenged for an alleged failure described in this paragraph.

9 (2) Immunity from exclusionary zoning litigation shall not limit
10 the ability of an interested party to bring a challenge before the
11 program alleging that, despite the issuance of compliance
12 certification, a municipality's fair share obligation, fair share plan,
13 housing element, or ordinances implementing the fair share plan or
14 housing element are in violation of the Mount Laurel doctrine.
15 However, the decisions of the program shall retain a presumption of
16 validity if challenged for an alleged violation described in this
17 paragraph.

18 c. Prior to the beginning of each new 10-year round of housing
19 obligations beginning with the fourth round on July 1, 2025, the
20 Department of Community Affairs shall conduct a calculation of
21 regional need and municipal present and prospective obligations in
22 accordance with the formulas established in sections 6 and 7 of
23 P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3).

24 d. For the fourth round of affordable housing obligations, the
25 department shall prepare and submit a report to the Governor, and,
26 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
27 Legislature providing a report on the calculations of regional need
28 and municipal obligations for each region of the State within the
29 earlier of seven months following the effective date of P.L.2024, c.2
30 (C.52:27D-304.1 et al.) or December 1, 2024. To assist in this
31 calculation, the Highlands Water Protection and Planning Council
32 shall provide a list of Highlands-conforming municipalities to the
33 department no less than five business days following the effective
34 date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The department shall
35 provide the report to each municipality in the State at the same time
36 that it submits the report to the Governor and Legislature and shall
37 also publish such report on the department's Internet website. For
38 the fifth round, and each subsequent new round of housing
39 obligations, the department shall prepare and submit a report to
40 each municipality in the State, the Governor, and, pursuant to
41 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on
42 these calculations on or before August 1 of the year prior to the start
43 of the new round and shall also publish such report on the
44 department's Internet website. For each 10-year round of housing
45 obligations, a municipality may take into consideration the
46 calculations in the report prepared by the department pursuant to
47 this subsection in determining its present and prospective
48 obligations.

1 e. Nothing in the provisions of subsections c., d., or f. of this
2 section shall be interpreted to render any calculation in a report by
3 the department published pursuant to this section binding on any
4 municipality or other entity, nor to render any failure by the
5 department to timely conduct the calculations or publish a report
6 required by this section to alter the deadlines or process set forth in
7 this section. The ultimate determination of a municipality's present
8 and prospective need shall be through the process as set forth
9 below.

10 f. (1) (a) With consideration of the calculations contained in the
11 relevant report published by the department pursuant to this section,
12 for each 10-year round of affordable housing obligations beginning
13 with the fourth round, a municipality shall determine its present and
14 prospective fair share obligation for affordable housing in
15 accordance with the formulas established in sections 6 and 7 of
16 P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution,
17 which shall describe the basis for the municipality's determination
18 and bind the municipality to adopt a housing element and fair share
19 plan pursuant to paragraph (2) of this subsection based on this
20 determination as may be adjusted by the program as set forth in this
21 subsection.

22 (b) For the fourth round of affordable housing obligations, this
23 determination of present and prospective fair share obligation shall
24 be made by binding resolution no later than January 31, 2025.
25 After adoption of this binding resolution, the municipality shall file
26 an action regarding the resolution with the program no later than 48
27 hours following adoption. The resolution, along with the date of
28 filing with the program, shall be published on the program's
29 publicly accessible Internet website. The municipality shall also
30 publish the resolution on its publicly accessible Internet website, if
31 the municipality maintains one. If the municipality does not meet
32 this deadline, it shall lose immunity from exclusionary zoning
33 litigation until such time as the municipality is determined to have
34 come into compliance with the "Fair Housing Act," P.L.1985, c.222
35 (C.52:27D-301 et al.) and the Mount Laurel doctrine. A
36 determination of the municipality's present and prospective
37 obligation may be established before a county-level housing judge
38 as part of any resulting declaratory judgment action pursuant to
39 section 13 of P.L.1985, c.222 (C.52:27D-313), as amended by
40 P.L.2024, c.2 (C.52:27D-304.1 et al.), or through exclusionary
41 zoning litigation. If the municipality meets this January 31
42 deadline, then the municipality's determination of its obligation
43 shall be established by default and shall bear a presumption of
44 validity beginning on March 1, 2025, as the municipality's
45 obligation for the fourth round, unless challenged by an interested
46 party on or before February 28, 2025. The municipality's
47 determination of its fair share obligation shall have a presumption
48 of validity, if established in accordance with sections 6 and 7 of

1 P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), in any
2 challenge initiated through the program. An interested party may
3 file a challenge with the program, after adoption of the binding
4 resolution and prior to March 1, 2025, alleging that the
5 municipality's determination of its present and prospective
6 obligation does not comply with the requirements of sections 6 and
7 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). For the
8 fifth round, and each subsequent new round of housing obligations,
9 the deadlines established in this subparagraph shall be on the last
10 day of January, the last day of February, and the first day of March,
11 respectively, of the year of the start of each new round.

12 (c) The Administrative Director of the Courts shall establish
13 procedures for the program to consider a challenge and resolve a
14 dispute initiated by an interested party pursuant to subparagraph (b)
15 of this paragraph. To resolve a challenge, the program shall apply
16 an objective assessment standard to determine whether or not the
17 municipality's calculation of its obligation is compliant with the
18 requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2
19 and C.52:27D-304.3). Any challenge must state with particularity
20 how the municipal calculation fails to comply with sections 6 and 7
21 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and include
22 the challenger's own calculation of the fair share obligations in
23 compliance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2
24 and C.52:27D-304.3). The program shall establish procedures to
25 summarily dismiss any objection or challenge that does not meet
26 these minimum standards. For the purpose of efficiency, the
27 program shall, in its own discretion, permit multiple challenges to
28 the same municipal determination to be consolidated. The
29 program's approach to resolving a dispute may include: (i) a finding
30 that the municipality's determination of its present and prospective
31 need obligation did not facially comply with the requirements of
32 sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-
33 304.3) and thus the municipality's immunity shall be revoked; (ii)
34 an adjustment of the municipality's determination of its present and
35 prospective need obligation to comply with the requirements of
36 sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-
37 304.3) without revoking immunity; or (iii) a rejection of a challenge
38 and affirm the municipality's determination. The decision shall be
39 provided to the municipality and all parties that have filed
40 challenges no later than March 31 of the year when the current
41 round is expiring and the new round is beginning and concurrently
42 posted on the program's Internet website. The Administrative
43 Director of the Courts shall establish procedures for any further
44 appellate review of such determinations and may establish an
45 expedited process for consolidated review of any such challenges
46 by the Supreme Court, provided that any party seeking appellate
47 review shall not change the deadlines established for municipal

1 filing of a housing element and fair share plan, and implementing
2 ordinances.

3 (2) (a) A municipality shall adopt a housing element and fair
4 share plan as provided for by the "Fair Housing Act," P.L.1985,
5 c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate
6 zoning and other ordinances and resolutions to implement its
7 present and prospective obligation established in paragraph (1) of
8 this subsection on or before June 30, 2025. After adoption of the
9 housing element and fair share plan, and the proposal of drafts of
10 the appropriate zoning and other ordinances and resolutions, the
11 municipality shall within 48 hours of adoption or by June 30, 2025,
12 whichever is sooner, file the same with the program as part of the
13 action initiated pursuant to subparagraph (b) of paragraph (1) of this
14 subsection through the program's Internet website. Any
15 municipality that does not do so by June 30, 2025, shall not retain
16 immunity from exclusionary zoning litigation until such time as the
17 municipality is determined to have come into compliance with the
18 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the
19 Mount Laurel doctrine and shall be subject to review through the
20 declaratory judgment process as established in paragraph (3) of this
21 subsection. As part of its housing element and fair share plan, the
22 municipality shall include an assessment of the degree to which the
23 municipality has met its fair share obligation from the prior rounds
24 of affordable housing obligations as established by prior court
25 approval, or approval by the council, and determine to what extent
26 this obligation is unfulfilled or whether the municipality has credits
27 in excess of its prior round obligations. If a prior round obligation
28 remains unfulfilled, or a municipality never received an approval
29 from court or the council for any prior round, the municipality shall
30 address such unfulfilled prior round obligation in its housing
31 element and fair share plan. Units included as part of the
32 municipality's unfulfilled prior round obligation shall not count
33 towards the cap on units in the municipality's prospective need
34 obligation. In addressing prior round obligations, the municipality
35 shall retain any sites that, in furtherance of the prior round
36 obligation, are the subject of a contractual agreement with a
37 developer, or for which the developer has filed a complete
38 application seeking subdivision or site plan approval prior to the
39 date by which the housing element and fair share plan are required
40 to be submitted, and shall demonstrate how any sites that were not
41 built in the prior rounds continue to present a realistic opportunity,
42 which may include proposing changes to the zoning on the site to
43 make its development more likely, and which may also include the
44 dedication of municipal affordable housing trust fund dollars or
45 other monetary or in-kind resources. The municipality shall only
46 plan to replace any sites planned for development as provided by a
47 prior court approval, settlement agreement, or approval by the
48 council, with alternative development plans, if it is determined that

1 the previously planned sites no longer present a realistic
2 opportunity, and the sites in the alternative development plan
3 provide at least an equivalent number of affordable units and are
4 otherwise in compliance with the "Fair Housing Act," P.L.1985,
5 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a
6 municipality proposes to replace a site for which a complete
7 application seeking subdivision or site plan approval has not been
8 filed prior to the date by which the housing element and fair share
9 plan is required to be submitted, there shall be a rebuttable
10 presumption in any challenge filed to the municipality's plan that
11 any site for which a zoning designation was adopted creating a
12 realistic opportunity for the development of a site prior to July 1,
13 2020, or July 1 of every 10th year thereafter, as applicable, may be
14 replaced with one or more alternative sites that provide a realistic
15 opportunity for at least the same number of affordable units and is
16 otherwise in compliance with the "Fair Housing Act," P.L.1985,
17 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the
18 extent a municipality has credits, including bonus credits, from
19 units created during a prior round that are otherwise permitted to be
20 allocated toward the municipality's unfulfilled prior round
21 obligation or present or prospective need obligation in an upcoming
22 round, the municipality shall be entitled to rely on the rules,
23 including rules for bonus credits, applicable for the round during
24 which those credits were accumulated. If a municipality has credits
25 in excess of its prior round obligations, and such excess credits
26 represent housing that will continue to be deed-restricted and
27 affordable through the current round, the municipality may include
28 such housing, and applicable bonus credits, towards addressing the
29 municipality's new calculation of prospective need. Consistent with
30 subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the
31 total number of bonus credits shall in no circumstance exceed 25
32 percent of the municipality's prospective obligation in any round.
33 The municipality may in its plan lower its prospective need
34 obligation to the extent necessary to prevent establishing a
35 prospective need obligation that requires the municipality to
36 provide a realistic opportunity for more than 1,000 housing units,
37 after the application of any excess credits, or to prevent a
38 prospective need obligation that **【exceeds 20 percent of the total**
39 **number of households in a municipality according to the most**
40 **recent federal decennial census, not including any prior round**
41 **obligation】** would result in an increase of the municipal population
42 by more than five percent in any 10-year period. For the purposes
43 of this population increase cap, each unit of affordable housing
44 shall be deemed to be occupied by four residents, except that units
45 of housing for seniors shall be deemed to be occupied by two
46 residents. If a municipality is subject to both a 1,000 unit cap **【or**
47 **20 percent】** and population increase cap, it may apply whichever
48 cap results in a lower prospective need obligation. For the fifth

1 round, and for each subsequent new round of housing obligations,
2 the deadlines in this paragraph shall be June 30 for the adoption of
3 the housing element and fair share plan, and the proposal of drafts
4 of the appropriate zoning and other ordinances and resolutions to
5 implement its present and prospective obligation, of the year of the
6 start of the new round.

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

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

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

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

1 dispute may be subject to changes to reflect the results of the
2 dispute. As an alternative to adopting all necessary implementing
3 ordinances and resolutions by the March 15 deadline, a municipality
4 involved in a continuing dispute over the issuance of compliance
5 certification may adopt a binding resolution by this date to commit
6 to adopting the implementing ordinances and resolutions following
7 resolution of the dispute, with necessary adjustments to reflect the
8 resolution of the dispute.

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

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

26 (b) A municipality that has not adopted and published a binding
27 resolution pursuant to paragraph (1) of this subsection or that has
28 not adopted and filed a housing element and fair share plan pursuant
29 to paragraph (2) of this subsection may seek compliance
30 certification by filing an action pursuant to section 13 of P.L.1985,
31 c.222 (C.52:27D-313), provided that any exclusionary zoning
32 litigation filed by a plaintiff against such a municipality prior to
33 such time may proceed notwithstanding such filing. In a
34 municipality that has adopted and published a binding resolution
35 pursuant to paragraph (1) of this subsection and has adopted and
36 filed a housing element and fair share plan pursuant to paragraph
37 (2) of this subsection, a court shall not consider exclusionary zoning
38 litigation during the timeframe after the timely submission of a
39 binding resolution or fair share plan and housing element of a
40 municipality, or both, and before a challenge is submitted, or during
41 the timeframe of a challenge that is pending resolution with the
42 program pursuant to this subsection. A court may consider
43 exclusionary zoning litigation after such timeframe upon a finding
44 that the municipality: (i) is determined to be constitutionally
45 noncompliant with its responsibilities pursuant to the "Fair Housing
46 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in
47 the program in bad faith; (ii) has failed to meet the deadlines
48 established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.); or

1 (iii) has, after receiving compliance certification, failed to comply
2 with the terms of that certification by not actually allowing for the
3 development of the affordable housing as provided for in its fair
4 share plan and housing element through actions or omissions, or
5 both, of a municipality or its subordinate boards.

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

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

14 (e) A municipality shall not be deemed out of compliance with
15 the deadlines of P.L.2024, c.2 (C.52:27D-304.1 et al.), or lose
16 immunity from exclusionary zoning litigation, due to a failure by
17 the program to promptly maintain and update its Internet website or
18 other operational failure of the program.

19 g. A compliance certification, issued pursuant to P.L.2024, c.2
20 (C.52:27D-304.1 et al.), shall be accompanied by a written report
21 that shall set forth the basis of the issuance of the certification and
22 shall be in a format to be developed and approved by the
23 Administrative Director of the Courts.

24 (cf: P.L.2024, c.2, s.3)

25
26 3. (New section) The Department of Environmental Protection
27 shall, pursuant to the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.), adopt rules and regulations, by the first
29 day of the seventh month next following enactment, to guide
30 determinations of flood-prone lands excluded from available land
31 resources for affordable housing purposes pursuant to section 1 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).

33
34 4. This act shall take effect immediately, but section 1 of this
35 act shall remain inoperative until the first day of the seventh month
36 next following enactment.

37 38 39 STATEMENT

40
41 This bill provides that a municipality is not required to authorize
42 construction of non-redevelopment housing projects on
43 undeveloped land.

44 Additionally, this bill caps the number of units a municipality
45 may have allocated as its fair share affordable housing obligation
46 with regard to the size of the municipal population. Current law
47 provides, with certain exceptions, that no municipality shall be
48 required to address a fair share of affordable housing units that

1 exceeds 1,000 low- and moderate-income units within 10 years
2 from the grant of substantive certification, or 20 percent of the total
3 number of households in a municipality. In order to prevent the
4 disparate impact such a potentially large affordable housing
5 mandate can create for municipalities with small populations, this
6 bill replaces the 20 percent cap on increases in the number of
7 households, providing instead that an allocation of units to a
8 municipality as its fair share shall not exceed an amount that would
9 result in an increase of the municipal population by more than five
10 percent.

11 This bill would also exclude from determinations of available
12 land resources for affordable housing purposes any land that is: (1)
13 lower than the most recent "flood elevation determination,"
14 measured under federal standards, (2) lower than the applicable
15 flood elevation standard required under regulations adopted
16 pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19
17 (C.58:16A-50 et seq.), or (3) within 100 feet of category one
18 waters, as designated by the Department of Environmental
19 Protection. As defined under federal regulation, 44 C.F.R. s.59.1, a
20 "flood elevation determination" refers to a determination by the
21 Federal Insurance Administrator of the water surface elevations of a
22 "base flood," also understood as a flood level that has a one percent
23 or greater chance of occurrence in any given year.

24 This bill directs the Department of Environmental Protection to
25 adopt rules and regulations to guide determinations of flood-prone
26 lands by the first day of the seventh month next following
27 enactment. Specified portions of the bill are to remain inoperative
28 until the first day of the seventh month next following enactment.