

[First Reprint]

ASSEMBLY, No. 1907

STATE OF NEW JERSEY
216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)
Assemblyman TROY SINGLETON
District 7 (Burlington)
Assemblywoman BETTYLOU DECROCE
District 26 (Essex, Morris and Passaic)
Assemblywoman PAMELA R. LAMPITT
District 6 (Burlington and Camden)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywomen Watson Coleman, Handlin, McHose, Pintor Marin,
Assemblyman Space, Assemblywoman Pinkin, Assemblymen Lagana,
Johnson, Rible, Assemblywoman Casagrande, Assemblymen Fiocchi,
Eustace, Senators Lesniak, Beck, Allen, T.Kean, Pennacchio, Singer,
Stack, A.R.Bucco and Oroho

SYNOPSIS

Reinstates moratorium on imposition of Statewide non-residential development fees until January 2015.

CURRENT VERSION OF TEXT

As amended on September 11, 2014 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 7/1/2014)

1 AN ACT concerning ¹affordable housing and¹ the Statewide non-
2 residential development fee, ¹**[amending P.L.2008, c. 46 and**
3 **P.L.2009, c.90]** and amending, supplementing and repealing
4 various parts of the statutory law¹.

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

8
9 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
10 read as follows:

11 37. a. The provisions of this subsection shall not apply to a
12 financial or other contribution that a developer made or committed
13 itself to make prior to the effective date of sections 32 through 38 of
14 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
15 provisions of P.L.2008, c.46 that would permit the imposition of a
16 fee upon a developer of non-residential property shall not apply to:

17 (1) Non-residential property for which a site plan has received
18 either preliminary approval, pursuant to section 34 of P.L.1975,
19 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
20 P.L.1975, c.291 (C.40:55D-50), prior to **[July]** January 1, **[2013]**
21 2015 including, but not limited to, the time period commencing on
22 July 1, 2013 through the effective date of P.L. , c. (pending
23 before the Legislature as this bill); provided that a permit for the
24 construction of the building has been issued by the local enforcing
25 agency having jurisdiction, in accordance with section 13 of
26 P.L.1975, c.217 (C.52:27D-131), prior to **[January]** July 1, **[2015]**
27 2016;

28 (2) A non-residential planned development which has received
29 approval of a general development plan pursuant to section 5 of
30 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
31 for which the developer has entered into a developer's agreement
32 pursuant to a development approval granted pursuant to P.L.1975,
33 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
34 into a redevelopment agreement pursuant to P.L.1992, c.79
35 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
36 (C.52:27D-329.1 et al.); provided, however, that the general
37 development plan, developer's agreement, redevelopment
38 agreement, or any development agreement pursuant to the
39 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
40 provides that the developer or redeveloper pay a fee for affordable
41 housing of at least one percent of the equalized assessed value of
42 the improvements which are the subject of the development plan,
43 developer's agreement, or redevelopment agreement;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's recommendations September 11, 2014.

1 (3) A non-residential project that, prior to **【July】** January 1,
2 **【2013】** 2015 including, but not limited to, the time period
3 commencing on July 1, 2013 through the effective date of P.L. ,
4 c. (pending before the Legislature as this bill), has been referred
5 to a planning board by the State, a governing body, or other public
6 agency for review pursuant to section 22 of P.L.1975, c.291
7 (C.40:55D-31); provided that a permit for the construction of the
8 building has been issued by the local enforcing agency having
9 jurisdiction, in accordance with section 13 of P.L.1975, c.217
10 (C.52:27D-131), prior to **【January】** July 1, **【2015】** 2016;

11 (4) A non-residential property for which a site plan application
12 has received approval by the New Jersey Meadowlands
13 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
14 14) prior to **【July】** January 1, **【2013】** 2015 including, but not
15 limited to, the time period commencing on July 1, 2013 through the
16 effective date of P.L. , c. (pending before the Legislature as this
17 bill); provided that a permit for the construction of the building has
18 been issued by the local enforcing agency having jurisdiction, in
19 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
20 prior to **【January】** July 1, **【2015】** 2016;

21 (5) Individual buildings within a nonresidential phased
22 development that received either preliminary or final approval prior
23 to **【July】** January 1, **【2013】** 2015 including, but not limited to, the
24 time period commencing on July 1, 2013 through the effective date
25 of P.L. , c. (pending before the Legislature as this bill),
26 provided that a permit for the construction of the building has been
27 issued prior to **【January】** July 1, **【2015】** 2016.

28 b. A developer may challenge non-residential development fees
29 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
30 filing a challenge with the Director of the Division of Taxation.
31 Pending a review and determination by the director, which shall be
32 made within 45 days of receipt of the challenge, collected fees shall
33 be placed in an interest bearing escrow account by the municipality
34 or by the State, as the case may be. Appeals from a determination
35 of the director may be made to the tax court in accordance with the
36 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
37 seq., within 90 days after the date of such determination. Interest
38 earned on amounts escrowed shall be credited to the prevailing
39 party.

40 c. Whenever non-residential development is situated on real
41 property that has been previously developed with a building,
42 structure, or other improvement, the non-residential development
43 fee shall be equal to two and a half (2.5) percent of the equalized
44 assessed value of the land and improvements on the property where
45 the non-residential development is situated at the time the final
46 certificate of occupancy is issued, less the equalized assessed value
47 of the land and improvements on the property where the non-

1 residential development is situated, as determined by the tax
2 assessor of the municipality at the time the developer or owner,
3 including any previous owners, first sought approval for a
4 construction permit, including, but not limited to, demolition
5 permits, pursuant to the State Uniform Construction Code, or
6 approval under the "Municipal Land Use Law," P.L.1975, c.291
7 (C.40:55D-1 et seq.). If the calculation required under this section
8 results in a negative number, the non-residential development fee
9 shall be zero.

10 Whenever the developer of a non-residential development has
11 made or committed itself to make a financial or other contribution
12 relating to the provision of housing affordable to low and moderate
13 income households prior to the enactment of P.L.2008, c.46
14 (C.52:27D-329.1 et al.), the non-residential development fee shall
15 be reduced by the amount of the financial contribution and the fair
16 market value of any other contribution made by or committed to be
17 made by the developer. For purposes of this section, a developer is
18 considered to have made or committed itself to make a financial or
19 other contribution, if and only if: (1) the contribution has been
20 transferred, including but not limited to when the funds have
21 already been received by the municipality; (2) the developer has
22 obligated itself to make a contribution as set forth in a written
23 agreement with the municipality, such as a developer's agreement;
24 or (3) the developer's obligation to make a contribution is set forth
25 as a condition in a land use approval issued by a municipal land use
26 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
27 (C.40:55D-1 et seq.).

28 d. Unless otherwise provided for by law, no municipality shall
29 be required to return a financial or any other contribution made by
30 or committed to be made by the developer of a non-residential
31 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
32 329.1 et al.) relating to the provision of housing affordable to low
33 and moderate income households, provided that the developer does
34 not obtain an amended, modified, or new municipal land use
35 approval with a substantial change in the non-residential
36 development. If the developer obtains an amended, modified, or
37 new land use approval for non-residential development, the
38 municipality, person, or entity shall be required to return to the
39 developer any funds or other contribution provided by the developer
40 for the provision of housing affordable to low and moderate income
41 households and the developer shall not be entitled to a reduction in
42 the affordable housing development fee based upon that
43 contribution.

44 e. The provisions of sections 32 through 38 of P.L.2008, c.46
45 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
46 manner as affecting the method or timing of assessing real property
47 for property taxation purposes. The payment of a non-residential

1 development fee shall not increase the equalized assessed value of
2 any property.

3 (cf: P.L.2011, c.122, s.1)

4

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

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

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

20 b. A developer of a non-residential project that, prior to July
21 17, 2008, has been referred to a planning board by the State, a
22 governing body, or other public agency for review pursuant to
23 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
24 to the payment of a nonresidential development fee prior to the
25 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
26 entitled to a return of any moneys paid that represent the difference
27 between moneys committed prior to July 17, 2008 and moneys paid
28 on or after that date.

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

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

44 e. Notwithstanding the provisions of subsections a., b., c., and
45 d. of this section, if, on the effective date of P.L.2009, c.90
46 (C.52:27D-489a et al.), a municipality that has returned all or a
47 portion of non-residential fees in accordance with subsection a. or

1 b. of this section shall be reimbursed from the funds available
2 through the appropriation made into the "New Jersey Affordable
3 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
4 (C.52:27D-320.1) within 30 days of the municipality providing
5 written notice to the Council on Affordable Housing.

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

23 g. A developer of a non-residential project that paid a fee
24 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
25 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2013
26 but prior to the effective date of P.L. , c. (pending before the
27 Legislature as this bill) shall be entitled to the return of those
28 monies paid, provided that said monies have not already been
29 expended by the municipality on affordable housing projects, and
30 provided that the provisions of section 37 of P.L.2008, c.46
31 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
32 Legislature as this bill) do not permit the imposition of a fee upon
33 the developer of that non-residential property. If moneys are
34 eligible to be returned under this subsection, a claim shall be
35 submitted, in writing, to the same entity to which the moneys were
36 paid, within 120 days of the effective date of P.L. , c. (pending
37 before the Legislature as this bill). The entity to whom the funds
38 were paid shall promptly review all requests for returns, to ensure
39 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as
40 amended by P.L. , c. (pending before the Legislature as this
41 bill), and the fees paid shall be returned to the claimant within 30
42 days of receipt of the claim for return.

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

44
45 13. (New section) the Council on Affordable Housing
46 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
47 301 et al.) is abolished, and all of its powers, functions, and duties

1 that are not repealed herein are continued in the Department of
 2 Community Affairs established pursuant to section 1 of P.L.1966,
 3 c.293 (C.52:27D-1), except as herein otherwise provided.
 4 Whenever, in any law, rule regulation, order, contract, document,
 5 judicial or administrative proceeding, or otherwise, reference is
 6 made to the Council on Affordable Housing, the same shall mean
 7 and refer to the Department of Community Affairs. All
 8 appropriations and other moneys available, and to become
 9 available, to the Council on Affordable Housing are hereby
 10 continued in the Department of Community Affairs, and shall be
 11 available for the objects and purposes for which such moneys are
 12 appropriated, subject to any terms, restriction, limitations, or other
 13 requirements imposed by State or federal law.

14 This transfer shall be subject to the provisions of the "State
 15 Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).¹
 16

17 ^{14.} Section 47 of P.L.1975, C.291 (c.40:55D-60) is amended to
 18 read as follows:

19 47. Whenever the proposed development requires approval
 20 pursuant to this act of a subdivision, site plan or conditional use,
 21 but not a variance pursuant to subsection d. of section 57 of **[this**
 22 **act]** P.L.1975, c.291 (C. 40:55D-70), the planning board shall have
 23 the power to grant to the same extent and subject to the same
 24 restrictions as the board of adjustment:

25 a. Variances pursuant to subsection 57 c. **[of this act]**
 26 P.L.1975, C.291 (c.40:55D-70);

27 b. Direction pursuant to section 25 of **[this act]** P.L.1975,
 28 c.291 (C.40:55D-34) for issuance of a permit for a building or
 29 structure in the bed of a mapped street or public drainage way,
 30 flood control basin or public area reserved pursuant to section 23
 31 **[of this act; and]** P.L.1975, c291 (C.40:55D-32); **[and]**

32 c. Direction pursuant to section 27 of **[this act]** P.L.1975,
 33 c.291 (C.40:55D-36) for issuance of a permit for a building or
 34 structure not related to a street; and

35 d. Variances pursuant to subsection d. of section 57 of P.L.1975,
 36 c.291 (C.40:55D-70), requested pursuant to section 23 of P.L.
 37 .c. (C. _____) (pending before the Legislature as this bill) for a
 38 proposed development in which at least 10 percent of the units are
 39 reserved for low- and moderate-income households, in a
 40 municipality that has not been determined to be inclusionary.

41 Whenever relief is requested pursuant to this section, notice of
 42 the hearing on the application for development shall include
 43 reference to the request for a variance or direction for issuance of a
 44 permit, as the case may be.

45 The developer may elect to submit a separate application
 46 requesting approval of the variance or direction of the issuance of a
 47 permit and a subsequent application for any required approval of a

1 subdivision, site plan or conditional use. The separate approval of
2 the variance or direction of the issuance of a permit shall be
3 conditioned upon grant of all required subsequent approvals by the
4 planning board. No such subsequent approval shall be granted
5 unless the approval can be granted without substantial detriment to
6 the public good and without substantial impairment of the intent
7 and purpose of the zone plan and zoning ordinance.

8 (cf: P.L.1984, c. 20, s. 10)¹

9

10 ^{15.} Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
11 read as follows:

12 57. Powers. The board of adjustment shall have the power to:

13 a. Hear and decide appeals where it is alleged by the appellant
14 that there is error in any order, requirement, decision or refusal
15 made by an administrative officer based on or made in the
16 enforcement of the zoning ordinance;

17 b. Hear and decide requests for interpretation of the zoning
18 map or ordinance or for decisions upon other special questions upon
19 which such board is authorized to pass by any zoning or official
20 map ordinance, in accordance with this act;

21 c. (1) Where: (a) by reason of exceptional narrowness,
22 shallowness or shape of a specific piece of property, or (b) by
23 reason of exceptional topographic conditions or physical features
24 uniquely affecting a specific piece of property, or (c) by reason of
25 an extraordinary and exceptional situation uniquely affecting a
26 specific piece of property or the structures lawfully existing
27 thereon, the strict application of any regulation pursuant to article 8
28 of **[this act]** P.L.1975, c.291 would result in peculiar and
29 exceptional practical difficulties to, or exceptional and undue
30 hardship upon, the developer of such property, grant, upon an
31 application or an appeal relating to such property, a variance from
32 such strict application of such regulation so as to relieve such
33 difficulties or hardship; (2) where in an application or appeal
34 relating to a specific piece of property the purposes of this act or the
35 purposes of the "Educational Facilities Construction and Financing
36 Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a
37 deviation from the zoning ordinance requirements and the benefits
38 of the deviation would substantially outweigh any detriment, grant a
39 variance to allow departure from regulations pursuant to article 8 of
40 **[this act]** P.L.1975, c.291; provided, however, that the fact that a
41 proposed use is an inherently beneficial use shall not be dispositive
42 of a decision on a variance under this subsection and provided that
43 no variance from those departures enumerated in subsection d. of
44 this section shall be granted under this subsection; and provided
45 further that the proposed development does not require approval by
46 the planning board of a subdivision, site plan or conditional use, in
47 conjunction with which the planning board has power to review a

1 request for a variance pursuant to subsection a. of section 47 of
2 **【this act】** P.L.1975, c.291; and

3 d. In particular cases for special reasons, grant a variance to
4 allow departure from regulations pursuant to article 8 of **【this act】**
5 P.L.1975, c.291 to permit:

6 (1) a use or principal structure in a district restricted against such
7 use or principal structure**【,】** ;

8 (2) an expansion of a nonconforming use**【,】** ;

9 (3) deviation from a specification or standard pursuant to section
10 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a
11 conditional use**【,】** ;

12 (4) an increase in the permitted floor area ratio as defined in
13 section 3.1 of P.L.1975, c.291 (C.40:55D-4)**【,】** ;

14 (5) an increase in the permitted density as defined in section 3.1
15 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required
16 lot area for a lot or lots for detached one or two dwelling unit
17 buildings, which lot or lots are either an isolated undersized lot or
18 lots resulting from a minor subdivision; or

19 (6) a height of a principal structure which exceeds by 10 feet or
20 10% the maximum height permitted in the district for a principal
21 structure. A variance under this subsection shall be granted only by
22 affirmative vote of at least five members, in the case of a municipal
23 board, or two-thirds of the full authorized membership, in the case
24 of a regional board, pursuant to article 10 of **【this act】** P.L.1975
25 c.291.

26 If an application development requests one or more variances but
27 not a variance for a purpose enumerated in subsection d. of this
28 section, the decision on the requested variance or variances shall be
29 rendered under subsection c. of this section.

30 No variance or other relief may be granted under the terms of
31 this section, including a variance or other relief involving an
32 inherently beneficial use, without a showing that such variance or
33 other relief can be granted without substantial detriment to the
34 public good and will not substantially impair the intent and the
35 purpose of the zone plan and zoning ordinance.

36 In a municipality that has been deemed inclusionary pursuant to
37 section 19 of P.L. _____, c. _____ (C. _____) (pending before the
38 Legislature as this bill), the board shall not be required to review
39 variances requested pursuant to this subsection for the development
40 of affordable housing under inherently beneficial use standards, and
41 a denial of a variance under such circumstances shall be
42 presumptively valid.

43 e. In respect to any airport safety zones delineated under the
44 "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
45 seq.), no variance or other relief may be granted under the terms of
46 this section, permitting the creation or establishment of a
47 nonconforming use which would be prohibited under standards

1 promulgated pursuant to that act, except upon issuance of a permit
2 by the Commissioner of Transportation. An application under this
3 section may be referred to any appropriate person or agency for its
4 report; provided that such reference shall not extend the period of
5 time within which the zoning board of adjustment shall act.

6 f. Upon application, hear and determine which, where, and to
7 what extent an alternative method described in section 22 of
8 P.L. , c. (C.) (pending before the Legislature as this
9 bill) of satisfying the set-aside requirements of section 21 of
10 P.L. , c. (C.) (pending before the Legislature as this
11 bill) may be employed.

12 (cf: P.L.2007, c.137, s.60)¹

13
14 ¹6. Section 9 of P.L.1966, c.293 (C.52:27D-9) is amended to
15 read as follows:

16 9. The department shall, in addition to other powers and duties
17 invested in it by this act, or by any other law:

18 (a) Assist in the coordination of State and Federal activities
19 relating to local government;

20 (b) Advise and inform the Governor on the affairs and problems
21 of local government and make recommendations to the Governor
22 for proposed legislation pertaining thereto;

23 (c) Encourage cooperative action by local governments,
24 including joint service agreements, regional compacts and other
25 forms of regional cooperation;

26 (d) Assist local government in the solution of its problems, to
27 strengthen local self-government;

28 (e) Study the entire field of local government in New Jersey;

29 (f) Collect, collate, publish and disseminate information
30 necessary for the effective operation of the department and useful to
31 local government;

32 (g) Maintain an inventory of data and information and act as a
33 clearing house and referral agency for information on State and
34 Federal services and programs;

35 (h) Stimulate local programs through publicity, education,
36 guidance and technical assistance concerning Federal and State
37 programs;

38 (i) Convene meetings of municipal, county or other local
39 officials to discuss ways of cooperating to provide service more
40 efficiently and economically;

41 (j) Maintain and make available on request a list of persons
42 qualified to mediate or arbitrate disputes between local units of
43 government arising from joint service projects or other cooperative
44 activities, and further to prescribe rates of compensation for all such
45 mediation, factfinding or arbitration services; and

46 (k) Post on the department's website the annual budget and three
47 immediately preceding adopted budgets of any municipality or

1 county that does not maintain its own website pursuant to the
2 requirements of N.J.S.40A:4-10; and

3 (l) Assume the duties of the Council on Affordable Housing
4 that are not repealed by P.L. _____, c. _____ (pending before the
5 Legislature as this bill) and are transferred to the department
6 pursuant to section 3 of P.L. _____, c. _____ (C. _____) and section 17 of
7 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
8 bill).

9 (cf: P.L.2011, c.7, s.2)¹

10

11 ^{17.} Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
12 read as follows:

13 4. As used in this act:

14 a. "Council" means the Council on Affordable Housing
15 established **【in this act】** by section 5 of P.L.1985, c.222 (C.52:27D-
16 305), 【which shall have primary jurisdiction for the administration
17 of housing obligations in accordance with sound regional planning
18 considerations in this State】 and, pursuant to section 3 of P.L. _____,
19 c. _____ (C. _____) (pending before the Legislature as this bill) and
20 subsequent to the effective date of section P.L. _____, c. _____ (C. _____)
21 (pending before the Legislature as this bill), the Department of
22 Community Affairs.

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

30 c. "Low income housing" means housing affordable according
31 to federal Department of Housing and Urban Development or other
32 recognized standards for home ownership and rental costs and
33 occupied or reserved for occupancy by households with a gross
34 household income equal to 50% or less of the median gross
35 household income for households of the same size within the
36 housing region in which the housing is located.

37 d. "Moderate income housing" means housing affordable
38 according to federal Department of Housing and Urban
39 Development or other recognized standards for home ownership
40 and rental costs and occupied or reserved for occupancy by
41 households with a gross household income equal to more than 50%
42 but less than 80% of the median gross household income for
43 households of the same size within the housing region in which the
44 housing is located.

45 e. **【"Resolution of participation" means a resolution adopted by**
46 **a municipality in which the municipality chooses to prepare a fair**
47 **share plan and housing element in accordance with this act.】**

1 (Deleted by amendment, P.L. _____, c. _____) (pending before the
2 Legislature as this bill)

3 f. "Inclusionary development" means a market rate residential
4 housing development **【**in which a substantial percentage of the
5 housing units are provided for a reasonable income range of**】** that
6 includes units set-aside as housing affordable to low and moderate
7 income households.

8 g. **【**"Conversion" means the conversion of existing
9 commercial, industrial, or residential structures for low and
10 moderate income housing purposes where a substantial percentage
11 of the housing units are provided for a reasonable income range of
12 low and moderate income households.**】** (Deleted by amendment,
13 P.L. _____, c. _____) (pending before the Legislature as this bill)

14 h. "Development" means any development for which
15 permission may be required pursuant to the "Municipal Land Use
16 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

17 i. "Agency" means the New Jersey Housing and Mortgage
18 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
19 seq.).

20 j. **【**"Prospective need" means a projection of housing needs
21 based on development and growth which is reasonably likely to
22 occur in a region or a municipality, as the case may be, as a result
23 of actual determination of public and private entities. In
24 determining prospective need, consideration shall be given to
25 approvals of development applications, real property transfers and
26 economic projections prepared by the State Planning Commission
27 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
28 196 et seq.).**】** (Deleted by amendment, P.L. _____, c. _____) (pending
29 before the Legislature as this bill)

30 k. "Disabled person" means a person with a physical disability,
31 infirmity, malformation or disfigurement which is caused by bodily
32 injury, birth defect, aging or illness including epilepsy and other
33 seizure disorders, and which shall include, but not be limited to, any
34 degree of paralysis, amputation, lack of physical coordination,
35 blindness or visual impediment, deafness or hearing impediment,
36 muteness or speech impediment or physical reliance on a service or
37 guide dog, wheelchair, or other remedial appliance or device.

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

44 m. "Very low income housing" means housing affordable
45 according to federal Department of Housing and Urban
46 Development or other recognized standards for home ownership
47 and rental costs and occupied or reserved for occupancy by

1 households with a gross household income equal to 30% or less of
2 the median gross household income for households of the same size
3 within the housing region in which the housing is located.

4 n. "Price restricted unit" means a residential dwelling unit that is
5 price restricted, including: units that are deed restricted for
6 occupancy by residents of low or moderate income; price restricted
7 pursuant to covenants established for units financed by federal Low
8 Income Housing Tax Credits; price restricted pursuant to covenants
9 established for units developed pursuant to the "Neighborhood
10 Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-
11 490 et seq.); units rehabilitated as either a sending or receiving
12 municipality under a regional contribution agreement, and subject
13 to price controls; units built or rehabilitated as part of a Community
14 Development Block Grant, and subject to price controls; housing
15 units operated by a Public Housing Authority; units constructed,
16 rehabilitated, or receiving project-based assistance under the
17 program authorized pursuant to section 8 of the United States
18 Housing Act of 1937.

19 o. "Developable land" means undeveloped property having
20 reasonable access to sewer service, having a slope of less than 15
21 percent, that is not property owned by a municipality or county and
22 designated by resolution or ordinance as open space, and located
23 where development is not prohibited pursuant to the "Freshwater
24 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the
25 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
26 the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1
27 et seq.), the "Highlands Water Protection and Planning Act,"
28 P.L.2004, c.120, (C.13:20-1 et al.), or the Federal Clean Water Act,
29 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands
30 Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et
31 seq.).

32 p. "Special needs housing" means housing, or the residential
33 portion of a development that is permanent supportive housing, as
34 defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a
35 community residence that is primarily for occupancy by individuals
36 with special needs who shall occupy such housing as their usual and
37 permanent residence.

38 q. "Special needs unit" means a single unit of special needs
39 housing for one or more occupants that contains, at a minimum, a
40 bedroom and a bathroom.

41 r. "Inclusionary municipality" means a municipality deemed,
42 pursuant to section 19 of P.L. , c. (C.) (pending before
43 the Legislature as this bill), to have provided a variety and choice of
44 housing as evidenced by the quantity of price-restricted units or
45 amount of other units, the characteristics of which demonstrate an
46 opportunity for low-income or moderate-income housing.

1 s. "Workforce housing" means housing affordable to,
2 according to federal Department of Housing and Urban
3 Development or other recognized standards for home ownership
4 and rental costs, and occupied by, or reserved for occupancy by,
5 households with a gross household income equal to or less than 120
6 of the median gross household income for households of the same
7 size within the housing region in which the housing is located.

8 t. "Residential development project" means new construction
9 resulting in the production of five or more residential dwelling
10 units, whether attached or detached.

11 u. "Small residential development project" means new
12 construction resulting in the production of fewer than five
13 residential dwelling units, whether attached or detached, and shall
14 not mean any construction or reconstruction of a single-family
15 dwelling that is occupied by, or intended to be occupied by, the
16 owner.

17 (cf: P.L.2008, c.46, s.5)¹

18
19 ¹8. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended
20 to read as follows:

21 1. As used in **【this act】** P.L.1991, c.479 (C.52:27D-307.1 et
22 al.):

23 "Agency" means the Housing and Mortgage Finance Agency
24 established pursuant to section 4 of the "New Jersey Housing and
25 Mortgage Finance Agency Law of 1983," P.L.1983, c.530
26 (C.55:14K-4).

27 "Commissioner" means the Commissioner of Community
28 Affairs.

29 "Council" means the Council on Affordable Housing created by
30 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,
31 pursuant to section 3 of P.L. _____, c. _____ (C. _____) (pending before
32 the Legislature as this bill) and subsequent to the effective date of
33 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
34 bill), the Department of Community Affairs.

35 "Department" means the Department of Community Affairs.

36 "Housing region" means a housing region as determined by the
37 **【Council on Affordable Housing】** Department of Community
38 Affairs pursuant to section 【7 of P.L.1985, c.222 (C.52:27D-307)】
39 17 of P.L. _____, c. _____ (C. _____) (pending before the Legislature
40 as this bill).

41 "Project" or "housing project" means any specific work or
42 undertaking for the purpose of providing housing accommodations,
43 whether by new construction or by rehabilitation or adaptation of
44 existing structures, that shall be affordable to persons and families
45 of low or moderate income within the meaning of the "Fair Housing
46 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or
47 undertaking may include the acquisition, construction or

1 rehabilitation of lands, buildings and improvements, and such
2 stores, offices, and social, recreational, communal or other facilities
3 as may be incidental or appurtenant to the housing accommodations
4 that are to be provided.

5 "Register" means the Register of Housing Projects directed by
6 section 2 of **【this act】** P.L.1991, c.479 (C.52:27D-307.2) to be
7 established and maintained by the commissioner.

8 (cf: P.L.1991, c.479, s.1)¹

9

10 ¹9. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended
11 to read as follows:

12 3. a. The commissioner shall cause to be developed a system
13 for assigning and designating priority ratings to each project
14 included in the register. Priority ratings shall be based upon the
15 following factors, giving to each factor such weight as the
16 commissioner shall judge to be appropriate:

17 (1) Feasibility. Each project shall be evaluated for its physical
18 and financial feasibility, giving consideration to the capabilities of
19 the proposed sponsor or developer, market conditions and
20 regulatory requirements in the locality for which it is proposed, and
21 the availability of financing in sufficient amount and at reasonable
22 cost.

23 (2) Desirability. Each project shall be evaluated with relation to
24 its probable effect in meeting the affordable housing needs of the
25 housing region in which it is to be located, in accordance with the
26 standards and criteria of the **【council】** Department of Community
27 Affairs. Consideration shall be given to (a) the number of
28 affordable dwelling units that the project would provide, (b) the
29 proportion of affordable units to the total number of units envisaged
30 in the project plan, (c) the distribution of those affordable units as
31 between those affordable to persons and families of low income and
32 those of moderate income, considered in relation to the needs of the
33 housing region, (d) appropriateness of the proposed tenure of the
34 affordable units, whether to be rental or owner-occupied, in relation
35 to the needs of the housing region, and (e) appropriateness of the
36 proposed distribution of units as to family size, in relation to the
37 needs of the housing region.

38 (3) Efficiency. Each project shall be evaluated on the basis of
39 the cost to the State, in terms of financial assistance granted or
40 revenue forgone in order to further the project, for each affordable
41 dwelling unit judged by the commissioner to be feasible and
42 desirable according to the terms of the proposal or application made
43 for such assistance.

44 b. In developing the system of assigning and designating
45 priorities, and in evaluating individual projects for such assignment
46 and designation in the register, the commissioner shall consult with
47 the executive director of the agency and the **【executive director of**

1 the council] Commissioner of Community Affairs. The [council]
2 person having control over the project and the agency shall
3 promptly and fully supply the commissioner with all relevant
4 information necessary for the commissioner's timely and complete
5 fulfillment of the requirements of this act.

6 (cf: P.L.1991, c.479, s.3)¹

7
8 ¹10. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended
9 to read as follows:

10 4. a. Any officer or employee of the department, including any
11 member, officer or employee of the agency [or the council], who
12 receives from any person any solicitation, application, proposal or
13 communication of any kind, whether oral or in writing, aimed at
14 furthering the assistance of any project shall promptly report the
15 same to the commissioner. The report shall identify the person or
16 persons making such communication. If any such person is not
17 identified in the register in accordance with the requirements of
18 subsection b. of section 2 of this act, the report shall state the
19 person's relationship to the sponsor or developer of the project and
20 the capacity in which the person represents himself or herself to be
21 acting on behalf of the sponsor or developer; or if the person fails or
22 refuses to supply that information, the report shall so state.

23 b. The commissioner shall develop a procedure or procedures
24 by which reports required under subsection a. of this section shall
25 be made either to the commissioner directly or through such
26 administrative channels as the commissioner shall devise and direct.
27 Notwithstanding the provisions of subsection i. of section 4 of
28 P.L.1983, c.530 (C.55:14K-4) [and subsection a. of section 5 of
29 P.L.1985, c.222 (C.52:27D-305)], the regulations adopted by the
30 commissioner in fulfillment of this subsection shall be of full force
31 and application on and within the agency [and the council]; and all
32 members, officers and employees of the agency [and council] shall
33 give full compliance with and obedience to the rules and orders of
34 the commissioner made in pursuance of his duties and
35 responsibilities under this act.

36 c. Reports made to the commissioner shall be promptly
37 forwarded by him, not later than 10 days after their receipt, to the
38 Governor and to the presiding officers of the Houses of the
39 Legislature, who shall cause all members of their respective Houses
40 to be notified of the receipt of those reports and shall make
41 adequate provision for the inspection of the commissioner's reports
42 by members and committees of either House, and for the
43 dissemination of those reports to the public. The reports forwarded
44 by the commissioner shall in each instance indicate the priority
45 rating that has been assigned in the register to the project to which
46 the report relates.

47 (cf: P.L.1991, c.479, s.4)¹

1 ¹11. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
2 read as follows:

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

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

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

24 (3) Determination of measures that the municipality will take to
25 assure that low and moderate income units remain affordable to low
26 and moderate income households for an appropriate period of not
27 less than six years;

28 (4) A plan for infrastructure expansion and rehabilitation if
29 necessary to assure the achievement of the municipality's fair share
30 of low and moderate income housing;

31 (5) Donation or use of municipally owned land or land
32 condemned by the municipality for purposes of providing low and
33 moderate income housing;

34 (6) Tax abatements for purposes of providing low and moderate
35 income housing;

36 (7) Utilization of funds obtained from any State or federal
37 subsidy toward the construction of low and moderate income
38 housing;

39 (8) Utilization of municipally generated funds toward the
40 construction of low and moderate income housing; and

41 (9) The purchase of privately owned real property used for
42 residential purposes at the value of all liens secured by the property,
43 excluding any tax liens, notwithstanding that the total amount of
44 debt secured by liens exceeds the appraised value of the property,
45 pursuant to regulations promulgated by the Commissioner of
46 Community Affairs pursuant to subsection b. of section 41 of

- 1 P.L.2000, c.126 (C.52:27D-311.2).**】** (Deleted by amendment,
2 P.L. _____, c. _____) (pending before the Legislature as this bill)
- 3 b. **【**The municipality may provide for a phasing schedule for
4 the achievement of its fair share of low and moderate income
5 housing.**】** (Deleted by amendment, P.L. _____, c. _____) (pending
6 before the Legislature as this bill)
- 7 c. (Deleted by amendment, P.L.2008, c.46)
- 8 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in
9 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
10 bill) shall require a municipality to raise or expend municipal
11 revenues in order to provide low and moderate income housing.
- 12 e. **【**When a municipality's housing element includes the
13 provision of rental housing units in a community residence for the
14 developmentally disabled, as defined in section 2 of P.L.1977,
15 c.448 (C.30:11B-2), which will be affordable to persons of low and
16 moderate income, and for which adequate measures to retain such
17 affordability pursuant to paragraph (3) of subsection a. of this
18 section are included in the housing element, those housing units
19 shall be fully credited as permitted under the rules of the council
20 towards the fulfillment of the municipality's fair share of low and
21 moderate income housing.**】** (Deleted by amendment, P.L. _____,
22 c. _____) (pending before the Legislature as this bill)
- 23 f. **【**It having been determined by the Legislature that the
24 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
25 a public purpose, a municipality or municipalities may utilize public
26 monies to make donations, grants or loans of public funds for the
27 rehabilitation of deficient housing units and the provision of new or
28 substantially rehabilitated housing for low and moderate income
29 persons, providing that any private advantage is incidental.**】**
30 (Deleted by amendment, P.L. _____, c. _____) (pending before the
31 Legislature as this bill)
- 32 g. **【**A municipality which has received substantive certification
33 from the council, and which has actually effected the construction
34 of the affordable housing units it is obligated to provide, may
35 amend its affordable housing element or zoning ordinances without
36 the approval of the council.**】** (Deleted by amendment, P.L. _____,
37 c. _____) (pending before the Legislature as this bill)
- 38 h. **【**Whenever affordable housing units are proposed to be
39 provided through an inclusionary development, a municipality shall
40 provide, through its zoning powers, incentives to the developer,
41 which shall include increased densities and reduced costs, in
42 accordance with the regulations of the council and this subsection.**】**
43 (Deleted by amendment, P.L. _____, c. _____) (pending before the
44 Legislature as this bill)
- 45 i. **【**The council, upon the application of a municipality and a
46 developer, may approve reduced affordable housing set-asides or

1 increased densities to ensure the economic feasibility of an
2 inclusionary development.】 (Deleted by amendment, P.L. _____,
3 c. _____) (pending before the Legislature as this bill)

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

29 (cf: P.L.2013, c.6, s.1)¹

30

31 ¹12. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended
32 to read as follows:

33 1. Beginning upon the effective date of P.L.2005, c.350
34 (C.52:27D-311a et al.), in order to be considered a price restricted
35 unit for purposes of a determination pursuant to subsection a. of
36 section 19 of P.L. _____, c. _____ (C. _____) (pending before the
37 Legislature as this bill), any new construction 【for which credit is
38 sought against a fair share obligation】 shall be adaptable in
39 accordance with the provisions of section 5 of P.L.2005, c.350
40 (C.52:27D-123.15). For the purposes of P.L.2005, c.350
41 (C.52:27D-311a et al.), "new construction" shall mean an entirely
42 new improvement not previously occupied or used for any purpose.

43 (cf: P.L.2005, c.350, s.1)¹

44

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

1 6. The **【council】** department may take such measures as are
2 necessary to assure compliance with the adaptability requirements
3 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
4 including the inspection of those units which are newly constructed
5 and receive housing credit as provided under section 1 of P.L.2005,
6 c.350 (C.52:27D-311a et al.) and section 21 of P.L. , c. (C.)
7 (pending before the Legislature as this bill) for adaptability, as part
8 of the monitoring which occurs pursuant to P.L.1985, c.222
9 (C.52:27D-301 et al.). **【If any units for which credit was granted in**
10 **accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a**
11 **et al.) are found not to conform to the requirements of P.L.2005,**
12 **c.350 (C.52:27D-311a et al.), the council may require the**
13 **municipality to amend its fair share plan within 90 days of**
14 **receiving notice from the council, to address its fair share obligation**
15 **pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that**
16 **the municipality fails to amend its fair share plan within 90 days of**
17 **receiving such notice, the council may revoke substantive**
18 **certification.】**
19 (cf: P.L.2005, c.350, s.6)¹

20

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

23 20. There is established in the Department of Community
24 Affairs a separate trust fund, to be used for the exclusive purposes
25 as provided in this section, and which shall be known as the "New
26 Jersey Affordable Housing Trust Fund." The fund shall be a non-
27 lapsing, revolving trust fund, and all monies deposited or received
28 for purposes of the fund shall be accounted for separately, by source
29 and amount, and remain in the fund until appropriated for such
30 purposes. The fund shall be the repository of all State funds
31 appropriated for affordable housing purposes, including, but not
32 limited to, the proceeds from the receipts of the additional fee
33 collected pursuant to paragraph (2) of subsection a. of section 3 of
34 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
35 Statewide non-residential development fees collected pursuant to
36 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
37 reverting from municipal development trust funds, or other monies
38 as may be dedicated, earmarked, or appropriated by the Legislature
39 for the purposes of the fund. All references in any law, order, rule,
40 regulation, contract, loan, document, or otherwise, to the
41 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
42 mean the "New Jersey Affordable Housing Trust Fund." Not less
43 than 13 percent of the total expenditures in any State fiscal year
44 from the New Jersey Affordable Housing Trust Fund shall be used
45 for housing projects and programs reserved for very low income
46 households. The department shall be permitted to utilize annually
47 up to 7.5 percent of the monies available in the fund for the

1 payment of any necessary administrative costs related to the
2 administration of the "Fair Housing Act," P.L.1985, c.222
3 (C.52:27D-301 et al.), or any costs related to administration of
4 P.L.2008, c.46 (C.52:27D-329.1 et al.) or P.L. , c. (C.)
5 (pending before the Legislature as this bill).

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

17 **【Of those monies deposited into the "New Jersey Affordable**
18 **Housing Trust Fund" that are derived from municipal development**
19 **fee trust funds, or from available collections of Statewide non-**
20 **residential development fees, a priority for funding shall be**
21 **established for projects in municipalities that have petitioned the**
22 **council for substantive certification.】 The commissioner shall**
23 **prioritize funding for projects that include special needs units when**
24 **making grants and awards from the "New Jersey Affordable**
25 **Housing Trust Fund."**

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

29 b. The commissioner shall establish rules and regulations
30 governing the qualifications of applicants, the application
31 procedures, and the criteria for awarding grants and loans and the
32 standards for establishing the amount, terms and conditions of each
33 grant or loan.

34 c. For any period which the council may approve, the
35 commissioner may assist affordable housing programs which are
36 not located in municipalities whose housing elements have been
37 granted substantive certification or which are not in furtherance of a
38 regional contribution agreement; provided that the affordable
39 housing program will meet all or part of a municipal low and
40 moderate income housing obligation.

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

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

- 1 (2) Creation of accessory apartments to be occupied by low and
2 moderate income households;
- 3 (3) Conversion of non-residential space to residential purposes;
4 provided a substantial percentage of the resulting housing units are
5 to be occupied by low and moderate income households;
- 6 (4) Acquisition of real property, demolition and removal of
7 buildings, or construction of new housing that will be occupied by
8 low and moderate income households, or any combination thereof;
- 9 (5) Grants of assistance to eligible municipalities for costs of
10 necessary studies, surveys, plans and permits; engineering,
11 architectural and other technical services; costs of land acquisition
12 and any buildings thereon; and costs of site preparation, demolition
13 and infrastructure development for projects undertaken pursuant to
14 an approved regional contribution agreement;
- 15 (6) Assistance to a local housing authority, nonprofit or limited
16 dividend housing corporation or association or a qualified entity
17 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
18 rehabilitation or restoration of housing units which it administers
19 which: (a) are unusable or in a serious state of disrepair; (b) can be
20 restored in an economically feasible and sound manner; and (c) can
21 be retained in a safe, decent and sanitary manner, upon completion
22 of rehabilitation or restoration; and
- 23 (7) Other housing programs for low and moderate income
24 housing, including, without limitation, (a) infrastructure projects
25 directly facilitating the construction of low and moderate income
26 housing not to exceed a reasonable percentage of the construction
27 costs of the low and moderate income housing to be provided and
28 (b) alteration of dwelling units occupied or to be occupied by
29 households of low or moderate income and the common areas of the
30 premises in which they are located in order to make them accessible
31 to handicapped persons.
- 32 e. Any grant or loan agreement entered into pursuant to this
33 section shall incorporate contractual guarantees and procedures by
34 which the division will ensure that any unit of housing provided for
35 low and moderate income households shall continue to be occupied
36 by low and moderate income households for at least 20 years
37 following the award of the loan or grant, except that the division
38 may approve a guarantee for a period of less than 20 years where
39 necessary to ensure project feasibility.
- 40 f. Notwithstanding the provisions of any other law, rule or
41 regulation to the contrary, in making grants or loans under this
42 section, the department shall not require that tenants be certified as
43 low or moderate income or that contractual guarantees or deed
44 restrictions be in place to ensure continued low and moderate
45 income occupancy as a condition of providing housing assistance
46 from any program administered by the department, when that
47 assistance is provided for a project of moderate rehabilitation if the

1 project (1) contains 30 or fewer rental units and (2) is located in a
2 census tract in which the median household income is 60 percent or
3 less of the median income for the housing region in which the
4 census tract is located, as determined for a three person household
5 by the council in accordance with the latest federal decennial
6 census. A list of eligible census tracts shall be maintained by the
7 department and shall be adjusted upon publication of median
8 income figures by census tract after each federal decennial census.

9 g. In addition to other grants or loans awarded pursuant to this
10 section, and without regard to any limitations on such grants or
11 loans for any other purposes herein imposed, the commissioner
12 shall annually allocate such amounts as may be necessary in the
13 commissioner's discretion, and in accordance with section 3 of
14 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
15 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
16 287.1 et al.). Such rental assistance grants shall be deemed
17 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
18 301 et al.), in order to meet the housing needs of certain low income
19 households who may not be eligible to occupy other housing
20 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

21 h. The department and the State Treasurer shall submit the
22 "New Jersey Affordable Housing Trust Fund" for an audit annually
23 by the State Auditor or State Comptroller, at the discretion of the
24 Treasurer. In addition, the department shall prepare an annual
25 report for each fiscal year, and submit it by November 30th of each
26 year to the Governor and the Legislature, and the Joint Committee
27 on Housing Affordability, or its successor, and post the information
28 to its web site, of all activity of the fund, including details of the
29 grants and loans by number of units, number and income ranges of
30 recipients of grants or loans, location of the housing renovated or
31 constructed using monies from the fund, the number of units upon
32 which affordability controls were placed, and the length of those
33 controls. The report also shall include details pertaining to those
34 monies allocated from the fund for use by the State rental assistance
35 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
36 and subsection g. of this section.

37 i. The commissioner may award or grant the amount of any
38 appropriation deposited in the "New Jersey Affordable Housing
39 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
40 320.1) to municipalities pursuant to the provisions of section 39 of
41 P.L.2009, c.90 (C.40:55D-8.8).
42 (cf: P.L.2013, c.253, s.49)¹

43
44 ¹15. Section 41 of P.L.2009, c.90 (C.52:27D-320.1) is amended
45 to read as follows:

46 41. a. Notwithstanding any law to the contrary, there is
47 appropriated \$15 million to the "New Jersey Affordable Housing

1 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
 2 (C.52:27D-320) **】, to replace the suspended non-residential**
 3 **development fee established under the provisions of the "Statewide**
 4 **Non-Residential Development Fee Act," sections 32 through 38 of**
 5 **P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)].**

6 b. (1) Municipalities authorized by the provisions of the
 7 "Statewide Non-Residential Development Fee Act," sections 32
 8 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)
 9 to directly receive and use development fees are permitted to
 10 petition the commissioner for the award of a grant or loan of any
 11 portion of the appropriation described in subsection a. of this
 12 section. The commissioner shall award grants or loans from the
 13 fund to municipalities that **【incorporated】** approve anticipated or
 14 existing housing projects and programs funded by a municipal
 15 development trust fund **【in a housing element submitted to the**
 16 **council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307)].**

17 (2) The commissioner shall target the award of any grant or loan
 18 to municipalities based on the extent that their housing plan relied
 19 on housing projects or programs funded in part or in whole by
 20 municipal development trust fund revenues.

21 (cf: P.L.2009, c.90, s.41)¹

22

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

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

43 b. Subject to the provisions of subsection d. of this section, a
 44 developer of a project consisting of newly-constructed residential
 45 units being financed in whole or in part with State funds, including,
 46 but not limited to, transit villages designated by the Department of
 47 Transportation and units constructed on State-owned property, shall

1 be required to reserve at least **[20]** 10 percent of the residential
2 units constructed for occupancy by low or moderate income
3 households, as those terms are defined in section 4 of P.L.1985,
4 c.222 (C.52:27D-304), with affordability controls as required under
5 the rules of the **[council]** department, unless the municipality in
6 which the property is located has received **[substantive certification**
7 **from the council and such a reservation is not required under the**
8 **approved affordable housing plan, or the municipality has been**
9 **given]** a judgment of repose or a judgment of compliance by the
10 court, and such a reservation is not required under the approved
11 affordable housing plan or the municipality has received substantive
12 certification from the council or has petitioned for substantive
13 certification prior to the effective date of P.L. , c. (C.)
14 (pending before the Legislature as this bill) and such petition has
15 not been dismissed or otherwise determined to be invalid. A
16 municipality may satisfy the set-aside requirements imposed by this
17 subsection through any combination of the alternate means provided
18 for in section 21 of P.L. , c. (C.) (pending before the
19 Legislature as this bill).

20 c. **[(1)** The Legislature recognizes that regional planning entities
21 are appropriately positioned to take a broader role in the planning
22 and provision of affordable housing based on regional planning
23 considerations. In recognition of the value of sound regional
24 planning, including the desire to foster economic growth, create a
25 variety and choice of housing near public transportation, protect
26 critical environmental resources, including farmland and open space
27 preservation, and maximize the use of existing infrastructure, there
28 is created a new program to foster regional planning entities.

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

43 (3) In addition to the entities identified in subsection a. of this
44 section, the Casino Reinvestment Development Authority, in
45 conjunction with the Atlantic County Planning Board, shall identify
46 and coordinate regional affordable housing opportunities directly
47 attributable to Atlantic City casino development, which may be

1 provided anywhere within Atlantic County, subject to the
2 restrictions of paragraph (4) of this subsection.

3 (4) The coordination of affordable housing opportunities by
4 regional entities as identified in this section shall not include
5 activities which would provide housing units to be located in those
6 municipalities that are eligible to receive aid under the "Special
7 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
8 are coextensive with a school district which qualified for
9 designation as a "special needs district" pursuant to the "Quality
10 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at
11 any time in the last 10 years have been qualified to receive
12 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall
13 within the jurisdiction of any of the regional entities specified in
14 subsection a. of this section. **】** (Deleted by amendment, P.L. _____,
15 c. _____) (pending before the Legislature as this bill)

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

32 (cf: P.L.2011, c.89, s.5)¹

33

34 ¹17. (New section) It shall be the duty of the Department of
35 Community Affairs to administer the "Fair Housing Act," P.L.1985,
36 c.222 (C.52:27D-301 et al.) and to assist municipalities that are
37 developing toward fulfilling their obligation to provide an
38 appropriate variety and choice of housing, including housing for
39 low- and moderate-income families. The department shall:

40 a. Determine the housing regions of the State, for the use and
41 information of municipalities;

42 b. Promulgate guidelines and criteria for housing elements
43 prepared pursuant to section 19 of the "Municipal Land Use Law,"
44 P.L.1975, c.291 (C.40:55D-28);

45 c. Pursuant to subsection a. of section 19 of P.L. _____, c. _____ (C. _____)
46 (pending before the Legislature as this bill), make a determination
47 of whether a municipality is an inclusionary municipality;

1 d. Establish guidelines or model language for covenants or other
2 devices to maintain the affordability of inclusionary units developed
3 pursuant to P.L. _____, c. _____ (C. _____) (pending before the Legislature
4 as this bill);

5 e. Establish affirmative marketing requirements for those
6 inclusionary units developed pursuant to section 21 of P.L. _____,
7 c. _____ (C. _____) (pending before the Legislature as this bill); and

8 f. Review and grant approval or disapprove any petition for
9 substantive certification filed prior to the effective date of P.L. _____,
10 c. _____ (C. _____) (pending before the Legislature as this bill). The
11 department may apply the regulations of the Council on Affordable
12 Housing in effect at the time a petition for substantive certification
13 was filed, or may adopt new regulations, or revisions or
14 amendments to existing regulations, concerning petitions for
15 substantive certification. The department shall conduct an interim
16 review of the housing plan of any municipality granted substantive
17 certification.

18 g. The department shall promulgate guidelines for development
19 fees lieu of construction of fractional dwelling units.

20 Pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), the Department of Community Affairs may
22 promulgate any rules and regulations necessary to effectuate the
23 purposes of this section, or may adopt new regulations, or revisions
24 or amendment to existing regulations, concerning petitions for
25 substantive certification, and any such regulations, revision, or
26 amendment shall be effective upon filing with the Office of
27 Administrative Law.¹

28
29 ¹18. (New section) a. Within 60 days following the effective
30 date of P.L. _____, c. _____ (C. _____) (pending before the Legislature as
31 this bill), a municipality shall apply to the department for a
32 determination of whether the municipality is an inclusionary
33 municipality that shall be deemed to have provided for its portion of
34 the region's opportunity for low- and moderate-income housing.

35 b. (1) A municipality that has not met the criteria in section 19
36 of P.L. _____ c. _____ (C. _____) (pending before the Legislature as this bill)
37 may reapply to the department at any time during the ten-year
38 planning cycle, based upon additional evidence that those criteria
39 have been satisfied.¹

40
41 ¹19. (New section) a. The department shall determine that a
42 municipality is an inclusionary municipality if:

43 (1) at least seven and one-half percent of its total present housing
44 stock is price restricted units; or

45 (2) at least 33 percent of the housing stock is: single-family
46 attached housing; or mobile homes located in a mobile home park
47 as defined in subsection d. of section 3 of P.L.1983, c.386

1 (C.40:55D-102); or multiple dwellings as defined pursuant to
2 subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3), provided
3 no less than one-half of the housing stock described in this
4 paragraph is rental housing; or

5 (3) it adopts zoning ordinances or incorporates into its Master
6 Plan prepared pursuant to section 19 of P.L.1975, c.291 (C.40:55D-
7 28) standards that contain:

8 (a) an analysis of the municipality's current housing stock;

9 (b) a plan pertaining to how the municipality will satisfy the
10 obligation pursuant to Section 20 of P.L. , c. (C.) (pending
11 before the Legislature as this bill), which may include, the provision
12 of funding sources and other incentives to encourage the
13 development of on-site and off-site low and moderate income
14 housing developments; construction by non-profit developers of
15 100 percent low and moderate income housing developments; the
16 construction of accessory apartments; programs to purchase and
17 mark down existing units; construction of supportive and special
18 needs housing; extension of existing affordability controls; and
19 other innovative means to provide for a variety and choice of
20 housing opportunities for low and moderate income citizens.

21 (c) a detailed analysis of the municipality's existing low and
22 moderate income housing stock; and

23 (d) a detailed plan providing for any municipal action, including
24 rehabilitation, necessary to address the needs of a municipality's
25 low- and moderate-income households residing in dilapidated or
26 unsuitable housing;

27 b. (1) In making a determination pursuant to subsection a.,
28 paragraph (1) or (2), the department shall give special needs
29 housing units newly constructed following the effective date of
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 twice as much weight as their actual proportion of a municipality's
32 housing stock when making a determination of whether a
33 municipality is an inclusionary municipality.

34 (2) In making a determination pursuant to paragraph (2) of
35 subsection a. of this section, the department may exclude buildings
36 determined to be luxury dwellings.

37 (3) Upon filing of ordinances or Master Plan elements with the
38 Department of Community Affairs pursuant to paragraph (3) of
39 subsection a. of this section, the filing shall be deemed to satisfy the
40 criteria in this section. In the event of a challenge to this filing, the
41 Commissioner of Community Affairs will undertake a limited
42 review of the municipality's filing, for the sole purpose of
43 determining whether the filing meets the criteria of paragraph (3) of
44 subsection a. of this section.

45 c. For units constructed following the effective date of
46 P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price
47 restricted for purposes of a determination pursuant to this section, a

1 unit shall be adaptable as described in section 5 of P.L.2005, c.350
2 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-
3 311a).

4 d. A municipality that received substantive certification under
5 N.J.A.C.5:96 and N.J.A.C.5:97, the rules of the Council on
6 Affordable Housing for the period beginning June 2, 2008, shall be
7 considered an inclusionary municipality pursuant to this section
8 until the end of its approved certification period; provided that the
9 municipality continues to fully and faithfully implement the
10 provisions of its fair-share plan.

11 e. The department shall review any application for a
12 determination that a municipality is an inclusionary municipality
13 and render a determination within 90 days. A determination of
14 whether a municipality is inclusionary shall be based upon a
15 municipality's existing housing stock. Units transferred through a
16 regional contribution agreement shall be fully credited to the
17 sending municipality for purposes of determining whether a
18 municipality is an inclusionary municipality.

19 f. A determination by the commissioner or department pursuant
20 to this section shall be deemed a final agency action appealable to
21 the Appellate Division of the Superior Court.

22 For purposes of this section, "single family attached housing"
23 means two or more dwelling units sharing a wall that extends from
24 ground to roof with an adjoining unit, with no other units above or
25 below, with separate major utility systems and metering.¹

26

27 ¹20. (New section) a. (1) For any new residential development
28 project, as defined in subsection t. of section 4 of P.L.1985, c.222
29 (C.52:27D-304), and any redevelopment, rehabilitation, infill
30 development, or adaptive reuse of a residential development project
31 that would qualify as a residential development project if it was a
32 new construction, a municipality shall require that one out of every
33 10 residential housing units proposed as part of that project be
34 reserved for occupancy as low income or moderate income housing.
35 For the purposes of this reservation, one special needs housing unit
36 shall count as two housing units.

37 (2) For any new small residential development project, as
38 defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-
39 304), and any redevelopment, rehabilitation, infill development, or
40 adaptive reuse of a residential or small residential development
41 project that would qualify as a small residential development
42 project if it was new construction, a municipality shall require that
43 one out of every 20 residential housing units proposed as part of
44 that project be reserved for occupancy as low-income or moderate-
45 income housing. For the purposes of this reservation, one special
46 needs housing unit shall count as two housing units. Nothing in this
47 paragraph shall be construed to require the developer of a small

- 1 residential development project to pay a development fee when the
2 developer is providing for the on-site construction of affordable
3 units.
- 4 b. Where land use or other local government approvals are
5 required, a municipality shall make a reasonable effort to facilitate
6 the economic viability of an inclusionary development developed
7 pursuant to the requirements of this section.
- 8 c. A municipality, in evaluating the economic viability of an
9 application for an inclusionary development, may be guided by the
10 applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the
11 regulations of the Council on Affordable Housing for the housing
12 round beginning June 2, 2008.
- 13 d. Nothing in this section shall preclude a municipality from
14 imposing additional inclusionary requirements upon redevelopment
15 or rehabilitation projects or any form of infill development or
16 adaptive reuse of a residential development project.
- 17 e. Half of the units reserved for low-income or moderate-
18 income housing pursuant to this section shall be reserved for low-
19 income housing and half the units shall be reserved for moderate-
20 income housing. If an odd number of affordable units is being
21 constructed, rehabilitated or developed pursuant to this section, the
22 higher the number of units may be determined by the municipality.
- 23 f. At least 50 percent of the units reserved for low-income or
24 moderate-income housing pursuant to this section shall be self-
25 contained residential dwelling units with a kitchen, sanitary
26 facilities, sleeping quarters and a private entrance, and which are
27 available to the general public and not restricted to any specific
28 segment of the population.
- 29 g. A municipality that has petitioned for substantive certification
30 prior to the effective date of P.L. _____, c. _____ (C. _____) (pending before
31 the Legislature as this bill), or that has received substantive
32 certification from the former Council on Affordable Housing or the
33 State Planning Commission, pursuant to section 17 of P.L. _____,
34 c. _____ (C. _____) (pending before the Legislature as this bill), shall be
35 exempt from the requirements of this section for the duration of the
36 housing round for which the municipality is certified. This section
37 shall not be construed to apply to a municipality whose petition for
38 substantive certification is dismissed or otherwise determined to be
39 invalid.
- 40 h. A municipality may withdraw a petition for substantive
41 certification or act to withdraw its certification and elect to comply
42 with the requirements of P.L. _____, c. _____ (C. _____) (pending before the
43 Legislature as this bill) by satisfying the requirements of this
44 section.¹
- 45
- 46 ¹21. (New section) a. A municipality may authorize the
47 following alternate means to satisfy the set-aside requirements

1 imposed by section 20 of P.L. , c. (C.) (pending before
 2 the Legislature as this bill):

3 (1) Permitting the required inclusionary units to be newly
 4 constructed off-site;

5 (2) Permitting the required inclusionary units to be provided off-
 6 site by rehabilitation of existing substandard units;

7 (3) Permitting a developer to pay a development fee in lieu of
 8 constructing a portion of the inclusionary units into the New Jersey
 9 Affordable Housing Trust Fund established pursuant to section 19
 10 of P.L.1985, c.222 (C.52:27D-320) for the construction of
 11 affordable housing;

12 (4) Assisting a municipally-sponsored 100 percent affordable
 13 development;

14 (5) Permitting construction of Elder Cottage Housing
 15 Opportunity units;

16 (6) Permitting the construction off-site of accessory apartment
 17 units affordable to low- and moderate-income households;

18 (7) permitting the purchase of subsidization of units that are
 19 subsequently sold or rented to low- and moderate-income
 20 households at affordable sale prices or rents ("buy down, write
 21 down"); and

22 (8) Permitting the construction of an assisted living residence in
 23 which all or a designated number of units are restricted to low- or
 24 moderate-income households.

25 b. Any person engaging in a residential development project
 26 shall file an application to the zoning board of adjustment for
 27 approval of alternate means of satisfying the set-aside requirements
 28 imposed by section 20 of P.L. , c. (C.) (pending before
 29 the Legislature as this bill). In the case of an application, the board
 30 of adjustment shall limit its determination to approving and
 31 determining which, and to what extent alternate means may be
 32 employed, and shall include the reasons for its determination in the
 33 findings of its decision thereon.

34 For purposes of this section, "rehabilitation" means the repair,
 35 renovation, alteration, reconstruction of a building or structure
 36 containing a dwelling space, pursuant to the rehabilitation subcode
 37 adopted by the Commissioner of Community Affairs pursuant to
 38 section 5 of the "State Uniform Construction Code Act," P.L.1975,
 39 c.217 (C.52:27D-123), that includes the rehabilitation of a major
 40 system and a minimum average investment for hard costs of
 41 \$10,000 per unit. The Department of Community Affairs shall
 42 develop standards for minimum documentation for qualifying
 43 rehabilitation.¹

44
 45 ¹22. (New section) A municipality may provide a preference for
 46 occupancy of up to one-half of the units required to be provided
 47 pursuant to section 20 of P.L. , c. (C.) (pending before the

1 Legislature as this bill), to those households that have at least one
2 member who works in the municipality and to those households that
3 have at least one member who resides in the municipality.¹
4

5 ¹23. (New section) a. In any municipality not determined to be
6 an inclusionary municipality by the department as described in
7 section 19 of P.L. , c. (C.) (pending before the Legislature
8 as this bill), when a proposed residential development project in
9 which at least 10 percent of the dwelling units are set aside for low-
10 or moderate-income households requires approval pursuant to the
11 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
12 of a subdivision, site plan or conditional use, or a variance,
13 including a variance pursuant to subsection d. of section 57 of
14 P.L.1975, c.291 (C.40:55D-70), the planning board shall, pursuant
15 to section 47 of P.L.1975, c.291 (C.40:55D-60), review the request
16 for a subdivision, site plan or conditional use, or a variance, and the
17 development including an affordable housing unit shall be deemed
18 to be an inherently beneficial use, and the developer shall be
19 required to make only a showing that the variance or other relief
20 can be granted without substantial detriment to the public good.

21 b. The provisions of this section shall only apply to a
22 municipality's vacant, developable property.

23 c. The provisions of this section shall not apply to a
24 municipality that has adopted an ordinance that reserves, for use as
25 workforce housing as defined in subsection s. of section 4 of
26 P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant,
27 developable property having reasonable access to sewer service, for
28 residential use.¹
29

30 ¹24. (New section) If any persons benefitting from a housing
31 program established pursuant to P.L. , c. (C.) (pending
32 before the Legislature as this bill) that assists persons who have
33 experienced, or may experience, the foreclosure and loss of their
34 personal residence, or addresses the needs of low- and moderate-
35 income households residing within the municipality, are otherwise
36 income qualified to occupy such housing under federal or State law,
37 then any affirmative marketing requirements contained in
38 regulations promulgated to effectuate the program shall be waived
39 to permit the persons to occupy, rent, or purchase new or
40 rehabilitated affordable housing units that they may have previously
41 occupied or owned.¹
42

43 ¹25. (New section) a. A municipality shall not be liable for any
44 unmet housing obligation based on regulations promulgated by the
45 Council on Affordable Housing pursuant to the "Fair Housing Act,"
46 P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time

1 period prior to the effective date of P.L. _____, c. _____ (C. _____) (pending
2 before the Legislature as this bill).

3 b. Notwithstanding subsection a. of this section, a municipality
4 shall not alter the zoning classification of any inclusionary
5 development site that is by judgment of repose, court order, or
6 settlement in exclusionary zoning litigation, designated or reserved
7 for purposes of satisfying a municipality's fair share of the region's
8 housing opportunities.

9 c. Subsection b. of this section shall not apply to any property
10 that is the subject of pending exclusionary litigation that has not
11 reached final judgment through and including all appeals, including
12 an appeal to the Supreme Court of New Jersey.¹

13
14 ¹26. (New section) a. No exclusionary zoning action naming a
15 municipality as a defendant shall be filed for 365 days following the
16 effective date of P.L. _____, c. _____ (C. _____) (pending before the
17 Legislature as this bill).

18 b. Subsection a. of this section shall not apply to a municipality
19 subject to a court order to provide affordable housing prior to the
20 effective date of P.L. _____, c. _____ (C. _____) (pending before the
21 Legislature as this bill).

22 c. for any litigation involving exclusionary zoning instituted
23 prior to the effective date of P.L. _____, c. _____ (C. _____) (pending before
24 the Legislature as this bill), jurisdiction may remain with the court,
25 which shall take judicial notice of the statutory intent stated
26 hereunder.¹

27
28 ¹27. (New section) The provisions of P.L. _____, c. _____ (C. _____)
29 (pending before the Legislature as this bill) shall be severable, and
30 if any of its provisions shall be held to be unconstitutional, the
31 decision of the court shall not affect the validity of the remaining
32 provisions of P.L. _____, c. _____ (C. _____) (pending before the
33 Legislature as this bill).¹

34
35 ¹28. Section 7 of P.L.1985, C.222 (c.52:27d-307) is repealed.¹

36
37 ¹29. The following sections are repealed:
38 Section 5 of P.L.1985 c.222 (C.52:27D-305);
39 Section 6 of P.L.1985, c.222 (52:27D-306);
40 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
41 Section 8 of P.L.1985, c.222 (C.52:27D-308);
42 Section 9 of P.L.1985, c.222 (C.52:27D-309);
43 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
44 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
45 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);
46 Section 13 of P.L.1985, c.222 (C.52:27D-313);
47 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);

1 Section 14 of P.L.1985, c.222 (C.52:27D-314);
2 Section 15 of P.L. 1985, c.222 (C.52:27D-315);
3 Section 16 of P.L.1985, c.222 (C.52:27D-316);
4 Section 17 of P.L.1985, c.222 (C.52:27D-317);
5 Section 18 of P.L.1985, c.222 (C.52:27D-318);
6 Section 19 of P.L.1985, c.222 (C.52:27D-319);
7 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
8 Section 8 of P.L.2008, c.46 (C.52:27D-329.2);
9 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
10 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);
11 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and
12 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).¹

13
14 ¹**[3.]** 30.¹ This act shall take effect immediately ¹except that
15 sections 3 and 28 shall be inoperative until the first day of the
16 seventh month following enactment¹.